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Commission of Inquiry
Concerning Certain Activities of the
Royal Canadian Mounted Police

Third Report

**Certain R.C.M.P. Activities
and the Question of
Governmental Knowledge**

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National Institute of Justice

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August, 1981

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CERTAIN R.C.M.P. ACTIVITIES
AND THE QUESTION OF
GOVERNMENTAL KNOWLEDGE

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COMMISSION OF INQUIRY
CONCERNING CERTAIN ACTIVITIES OF THE
ROYAL CANADIAN MOUNTED POLICE

Third Report

CERTAIN R.C.M.P. ACTIVITIES
AND THE QUESTION OF
GOVERNMENTAL KNOWLEDGE

August, 1981

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le 15 mai 1981

A SON EXCELLENCE
LE GOUVERNEUR EN CONSEIL

QU'IL PLAISE À VOTRE EXCELLENCE

Nous, les Commissaires nommés en vertu du décret du conseil C.P. 1977-1911 du 6 juillet 1977 pour faire enquête sur certaines activités de la Gendarmerie royale du Canada et faire rapport,

AVONS L'HONNEUR DE PRÉSENTER À VOTRE
EXCELLENCE CE TROISIÈME RAPPORT INTITULÉ:
«CERTAINES ACTIVITÉS DE LA GRC ET LA
CONNAISSANCE QU'EN AVAIT LE GOUVERNEMENT»

M. le juge D.C. McDonald, président



D.S. Rickerd, c.r.



Guy Gilbert, c.r.



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May 15, 1981

TO HIS EXCELLENCY
THE GOVERNOR IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

We, the Commissioners appointed by Order in Council P.C. 1977-1911 dated 6th July, 1977, to inquire into and report upon certain activities of the Royal Canadian Mounted Police,

BEG TO SUBMIT TO YOUR EXCELLENCY
THIS THIRD REPORT ENTITLED:
"CERTAIN R.C.M.P. ACTIVITIES AND THE
QUESTION OF GOVERNMENTAL KNOWLEDGE"

Mr. Justice D.C. McDonald (Chairman)



D.S. Rickerd, Q.C.



Guy Gilbert, Q.C.



NOTE BY COMMISSIONERS

We are not publishing a Foreword to this Report. We invite the reader to read the Foreword to our Second Report in which we express gratitude to the many people who have helped us to perform our duties.

Our published reports are as follows:

FIRST REPORT: "Security and Information"

- submitted to the Governor in Council October 9, 1979 in one official language.
- formally submitted to the Governor in Council in both official languages November 26, 1979.
- released by Prime Minister Clark to the press January 11, 1980
- later in 1980 published by the Department of Supply and Services.

SECOND REPORT: "Freedom and Security Under the Law"

- submitted to the Governor in Council January 23, 1981, in one official language, and subsequently translated into the other.
- printed, after deletion of some passages on various grounds, by the Department of Supply and Services, August, 1981, for public release at an early date thereafter.

THIRD REPORT: "Certain R.C.M.P. Activities and the Question of Governmental Knowledge"

- submitted to the Governor in Council May 15, 1981, in one official language, and subsequently translated into the other.
- printed, after deletion of some passages on various grounds, by the Department of Supply and Services, August, 1981, for public release at an early date thereafter. (It is expected that some further sections of the Third Report will be published at a later date: see the Commissioners' Note to Part VI, and comments in Part VIII).

In addition, on August 28, 1980, we submitted a "Special Report" to the Governor in Council. In it we reported information that had been supplied to us by Mr. Warren Hart concerning an alleged murder to which he had referred publicly in a television interview broadcast in January, 1979, on CFCF-TV, Montreal.

We considered that the information should be communicated to the Governor in Council so that the Government could in turn communicate it to the Attorney General of Ontario for investigation. We add that we have been advised that the information was communicated to the Attorney General of Ontario and that the police force having jurisdiction on criminal matters in Ontario conducted an investigation.

We do not intend to publish our Special Report, for in it we did not assert the truth or the contrary of the information given to us by Mr. Hart, and we consider that it would be unfair to an individual, who was named, to publish what as far as we were concerned was an uninvestigated allegation.

August 5, 1981

NOTE

All references to "Ex. —" are to exhibits filed at our hearings. Those exhibits filed *in camera* are indicated by the letter "C" in the exhibit number.

Similarly, all references to "Vol. —, p. —" are to the indicated volume and page of public testimony before the Commission, or of testimony originally given *in camera* but later made public in the volume indicated. However, if the Volume number has a "C" before it, that indicates that the testimony was given *in camera* and has not been made public.

A complete set of the transcripts of the public hearings of the Commission may be found at the following libraries:

Faculty of Law
University of Victoria
Victoria, British Columbia

Vancouver Public Library
750 Burrard Street
Vancouver, B.C.

Library
Faculty of Law
University of Alberta
Edmonton, Alberta

Library
University of Saskatchewan
Saskatoon, Saskatchewan

Davoe Library
University of Manitoba
Winnipeg, Manitoba

National Library
395 Wellington Street
Ottawa, Ontario

Library of Parliament
Ottawa, Ontario

Metropolitan Toronto Library
789 Yonge Street
Toronto, Ontario

Law Library
University of Windsor
Windsor, Ontario

Bibliothèque du Barreau
Palais de justice
12, rue St-Louis
Québec, Québec

Bibliothèque de la Ville de Montréal
Montréal, Québec

Dalhousie University Library
Halifax, Nova Scotia

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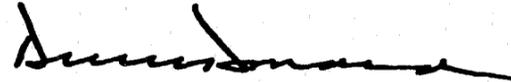
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Comments by the Commissioners
as to
Publication of Their Third Report

On the basis of the criteria stated in our Comments published at the beginning of our Second Report, we are in agreement with the non-publication of all those pages of our Third Report that have been deleted from this published version.

August 23, 1981

Mr. Justice D.C. McDonald (Chairman)



D.S. Rickerd, Q.C.



Guy Gilbert, Q.C.



PART I

GENERAL INTRODUCTION

1. Our terms of reference, as set forth in our Commission, and the Order-in-Council (P.C. 1977-1911) authorizing its creation, are as follows:

- (a) to conduct such investigations as in their opinion are necessary to determine the extent and prevalence of investigative practices or other activities involving members of the Royal Canadian Mounted Police that are not authorized or provided for by law...
- (b) to report the facts relating to any investigative action or other activity involving persons who were members of the Royal Canadian Mounted Police that was not authorized or provided for by law as may be established before the Commission, and to advise as to any further action that the Commissioners may deem necessary and desirable in the public interest.
- (c) to advise and make such report as the Commissioners deem necessary and desirable in the interest of Canada, regarding the policies and procedures governing the activities of the R.C.M.P. in the discharge of its responsibility to protect the security of Canada, the means to implement such policies and procedures, as well as the adequacy of the laws of Canada as they apply to such policies and procedures, having regard to the needs of the security of Canada.

2. Our Second Report, entitled "Freedom and Security under the Law", dealt essentially with the mandate given to us in paragraph (c), cited above. We did, however, also cover certain aspects of the mandate found in paragraphs (a) and (b), particularly in Part III of our Report where we reported in general terms on a number of practices that have been employed by the R.C.M.P. and that were or might have been "activities... not authorized or provided for by law", and on the "extent and prevalence" of such activities. We sought to avoid, as far as possible, the reporting of specific acts or activities. We made that effort for two reasons.

3. First, the description of specific situations was not necessary to the reasoning that led to our recommendations in matters of policy and law.

4. Second, the description of specific situations cannot be accomplished adequately without naming the individuals who were involved, and naming individuals may be taken to imply comment on their conduct. Where such comment would be negative, we could not report unless a notice was first given to the individual of the charge of misconduct that might be made against him in the Report, and we gave him an opportunity to make representations in person or by counsel. Such a procedure is required by section 13 of the

Inquiries Act. This procedure is lengthy and requires painstaking care. It could not be completed until very recently. Consequently, it was not possible to include such matters in our Report on policy and legal questions submitted in January 1981.

5. The process of giving notices and hearing representations in response to them has been completed and we are therefore now in a position to deal, in this Third Report, with a number of incidents involving conduct of named members of the R.C.M.P. We shall state whether, in our opinion, the conduct of certain individuals was "not authorized or provided for by law".

6. In addition to dealing with the specific incidents, we shall also cover, in this Report, several matters which fall within paragraph (c) of our Commission. They were not included in our Second Report, either because the research has been completed since submission of that Report, or because they have to be discussed in conjunction with a particular incident in order to be understood.

7. Although this Report is essentially a catalogue of a number of incidents, we have attempted to structure it not only so that conclusions can be reached with respect to each incident but also so that the incidents can be placed within a broader framework. We therefore examine first, in Part II, the extent to which senior government officials and Ministers, in the context of Cabinet committees and interdepartmental committees, were made aware, in general terms, of the fact that the R.C.M.P. were committing acts "not authorized or provided for by law". We then narrow the focus, in Part III, to an examination of the degree of knowledge by senior government officials and Ministers of particular practices "not authorized or provided for by law" of the R.C.M.P. The chapters in Part III correlate with chapters in Part III of our Second Report where we described those practices in detail.

8. The chapters of Parts IV, V and VI contain descriptions of the many incidents that we have inquired into, and the conclusions we have reached, concerning the participants. We have divided these incidents into three categories, based on the conclusions that we have drawn and the recommendations which we have made with respect to the participants. In the first category, which are all found in Part IV, although we may have been critical of individuals involved, we have made no recommendations for any further consideration of their conduct, for reasons stated in the introduction to that Part. Part V contains a number of incidents involving conduct on the part of members of the R.C.M.P. which, although not in our opinion unlawful in any other respect, might be contrary to the provisions of the R.C.M.P. Act and thus make the members subject to internal disciplinary proceedings. The incidents described in Part VI all give rise to conduct by members which may, in our opinion, have been illegal.

9. Having reviewed all the incidents, we turn, in Part VII, to a discussion of the factors which might be considered by the appropriate authorities in deciding what, if any, action ought to be taken, by way of prosecution or disciplinary proceedings, against individuals whose conduct is considered to be in breach of the general statute law or the R.C.M.P. Act.

The meaning of activities not authorized or provided for by law

14. In our Second Report we explained how we have interpreted the phrase "not authorized or provided for by law". For ease of reference, we reproduce as follows what we said:

38. In our opening statement on December 6, 1977 (Appendix D), we stated that the words "not authorized or provided for by law" directed us to inquire into and report on acts which were offences under the Criminal Code or under other federal or provincial statutes, or were wrong in the eyes of the law of tort in the common law provinces or of the law of delict in Quebec. We stated also that in interpreting those words we did not intend to ignore the moral and ethical implications of police investigative procedures.

39. Also in our opening statement we pointed out that those words required us to examine the legislative and constitutional basis for the existence of the R.C.M.P. generally, and for the existence of the Security Service of the R.C.M.P. in particular.

40. In reasons for decision pronounced on May 22, 1980 (Appendix H), we added that those words also require us to examine whether a particular act or practice, even if not an offence or civil wrong, was nevertheless beyond the statutory authority of the R.C.M.P., or was itself not authorized by normal procedures within the R.C.M.P.

41. In our opening statement we stated that in our report of a particular allegation we would give our view as to whether the conduct established by the evidence constituted an action or activity "not authorized or provided for by law". We confirmed that position in the reasons for decision dated May 22, 1980, but noted that our functions were not those of a court of law and that we could not render a judgment of acquittal or conviction. We stated that the duty imposed upon us to "report" facts that disclose an activity which was "not authorized or provided for by law" could not be performed unless we undertook an analysis as to whether the facts, *as disclosed by the evidence before us*, constituted an offence or a civil wrong or in some other way conduct "not authorized or provided for by law". At the same time, we recognized that, in situations where there is evidence as to the acts of specific individuals in specific cases, a dilemma arises as to how we can "report" publicly, including a commentary on the legal status of the acts as it appears on the evidence before us, without causing unfairness or the appearance of unfairness to any such individual if he is then tried on a criminal or other charge after all the publicity that the report may be given. In our separate Report on activities in which there is such evidence of specific cases we shall face this dilemma. It does not require further comment here. However, we might say that in a Practice Directive dated June 20, 1980 (Appendix I), we attempted to reduce the scope of the dilemma by directing that legal submissions concerning such cases where there is evidence about individuals (as compared with cases where there is merely evidence about general practices) be given to us in private.

10. Finally, in Part VIII, we make our recommendations with respect to publication of this Report. Those recommendations are made with a view to ensuring the fairest possible treatment for individuals who may be prosecuted or disciplined for their conduct.

11. This Report on a number of specific incidents and general practices involving members of the R.C.M.P., and like parts of our Second Report, is based on our formal hearings, interviews with officials within and outside the R.C.M.P., and examination of documents. Our report as to specific incidents is almost, but not entirely, the product of formal hearings. One exception to that generalization is the selection of matters that have arisen principally from complaints made to us by members of the public (Part IV, Chapter 10), as to which our Report is based mainly on the work of our investigators. Early in most chapters we list the volumes in which the testimony concerning the subject-matter can be located, but we do not, in the text, give page references for each point. The reader who wishes to refer to the transcripts will have little difficulty in locating the testimony in which he is interested. However, in some chapters where the testimony concerning the subject matter is located over a broad range of volumes we have cited page references throughout the text.

12. The scholar, journalist or general reader who in the future reviews the transcripts of our public and *in camera* hearings will find passing references to problems, or sometimes detailed hearings about particular matters, that are not referred to in any way in our Reports — not even in the classified Reports delivered to the Governor in Council. This should not occasion surprise. The absence of a discussion of such a matter in any of our Reports will mean no more than that we concluded, after inquiring into the matter, that there was no object in our reporting on it from the point of view of either paragraph (b) or paragraph (c) of our terms of reference. In other words, we concluded that the evidence did not establish that there was any “action or other activity involving persons who were members of the R.C.M.P. that was not authorized or provided for by law” (para. (b) of our terms of reference). We felt it was not “necessary” and “desirable in the interest of Canada” to refer to the matter in our Reports in order to make a full and informative report “regarding the policies and procedures governing the activities of the R.C.M.P. in the discharge of its responsibilities to protect the security of Canada” or to give advice as to the “means to implement such policies and procedures” or “the adequacy of the laws of Canada as they apply to such policies and procedures” (para. (c) of our terms of reference). Another way of putting the point we are making is that some of our inquiries have led, in the result, to what in our opinion have been “blind alleys” in terms of whether we need to report on them.

13. In this Report we describe the conduct of a number of individuals as being “not authorized or provided for by law” or as “unacceptable” or “improper”. An explanation of what we mean by those words is necessary before we move to a review of the conduct of the individuals.

The meaning of "unacceptable" and "improper" as those words are used in this Report, and their relationship to "activities not authorized or provided for by law"

15. In this and the next Parts of this Report, we frequently describe the conduct of a member or a past member of the R.C.M.P. as being "unacceptable" or "improper". It is appropriate to explain the sense in which those words are used.

16. At the outset, we wish to state that, in our opinion, it is axiomatic that any unlawful conduct is unacceptable and improper. One statute describing unlawful conduct to which we specifically draw attention is the R.C.M.P. Act, and particularly section 25 of that Act which deals with major service offences. The very broad provisions of section 25(o) make it a major service offence if a member

conducts himself in a scandalous, infamous, disgraceful, profane or immoral manner.

As the interpretation of those words is ultimately in the hands of the Commissioner of the R.C.M.P., to whom the final appeal lies, it seems to us to be unhelpful to pass judgment on whether the conduct which we consider unacceptable or improper falls within any of those categories. However, whenever we do refer to the conduct of a serving member of the R.C.M.P. as unacceptable, we intend that, and we recommend that, the R.C.M.P. consider whether proceedings under section 25(o) or any other subsection of that section would be appropriate. If the person is no longer a serving member of the R.C.M.P., he would not appear to be subject to proceedings under section 25.

17. However, even if a form of conduct is not unlawful under the Criminal Code or any other federal or provincial statute (including the R.C.M.P. Act) or any non-statutory rule of law, it may nevertheless be considered to be unacceptable or improper. We therefore must discuss the sense in which we use those words.

18. Reference to dictionary definitions, both French and English, confirms a broad range of meaning attaching to the words "unacceptable" and "improper". Clearly the precise shade of meaning that the use of the words implies when they are used in this Report must depend on the context in which they are used. Thus, the commission of a serious crime is "unacceptable" or "improper" in a sense that evokes indignation more than a lawful act that is a violation of Force policy but does not have any consequences external to the Force. Assuming that the two examples represent extreme ends of the spectrum, there may be many shades of "unacceptability" or "impropriety" in between and it does not seem to us to be useful to attempt a detailed analysis in the abstract.

19. What is more important is that by our use of these words we are indicating that we think that the conduct described, on the part of members of any police force, particularly one with great pride in its record of upholding the law, such as the R.C.M.P., cannot be tolerated and is to be discouraged. The manner in which the discouragement should be attempted may vary from

attempts at positive remedial action to rebuke to specific punishment. Again, the result should depend upon the context. We shall ordinarily try to explain the reasons for which we think the conduct is unacceptable or improper, and our doing so will assist others to understand the sense in which we have used the words in a particular case.

20. In applying our judgment as to what the conduct of a good policeman should be, we have attempted to apply those standards which we believe to have been recognized in our Canadian society. We realize that in attempting to interpret and apply objective standards of such an imprecise nature, we must draw, to a certain extent, on our own assessment of what those standards are. Not only is there no avoiding that process: we believe that that is what, after all, is expected of Commissioners of an Inquiry.

21. Our use of the words "unacceptable" and "improper" is in each case a rebuke to the person concerned. The degree of criticism will depend on the reasons that are given or that may be obvious in the circumstances. In arriving at a conclusion that a member's conduct was "unacceptable" or "improper", we shall take into account the context of the conduct — the circumstances that gave rise to it and surrounded it. The presence or absence of a malicious intent, the presence or absence of a motive of self-interest, the prejudice that may have been caused to someone or its absence, the effect of the conduct on the reputation and honour of the police force, the degree of seniority of the person whose conduct is in question, whether the conduct was an independent act or one that was part of an "accepted" systematic practice, whether the conduct represented disobedience or mere lack of judgment — these are among the circumstances that will be taken into account. No body of jurisprudence exists to guide us in weighing the conduct of members when we are assessing "acceptability" or "propriety" apart from the commission of offences. The fact of rebuke by a Commission of Inquiry may itself serve as a warning to the members and to other members in the future not to engage in such conduct. As we have said, whether any further action of a disciplinary nature should be taken is a matter for the discretion of the R.C.M.P. according to its proper procedures.

22. We consider this to be an appropriate juncture at which to make recommendations as to how our findings as to unlawful, unacceptable and improper conduct should be dealt with. In our opinion the public ought to be informed as to the disposition of the charges of misconduct made by us against members. We recommend that the Solicitor General and the Inspector of Police Practices (a position whose creation we recommended, and whose functions we defined, in our Second Report, Part X, Chapter 2) should keep under continuous review (a) the manner in which the provincial and federal attorneys general deal with the potential illegalities identified by us, and (b) the way in which the R.C.M.P. deals with members whose conduct is found by us to be unacceptable or improper. We further recommend that, within two years of the publication of this Report, and periodically thereafter, the Solicitor General report publicly on the status of each case of misconduct. Those cases which emanate from the Security Service, and are of a sensitive national security nature, should be referred to the Parliamentary Committee on Secu-

urity and Intelligence, whose creation we also recommended in our Second Report. Similarly, the Solicitor General should expect to be fully informed from time to time by the Commissioner of the R.C.M.P. as to disciplinary proceedings launched in regard to the matters we have reported on and their result (including the nature of punishment imposed). The Commissioner should report also as to decisions taken not to institute disciplinary proceedings.

23. This is also an appropriate point at which to record a further recommendation. We consider that copies of the public version of both our Second Report and this Report should be readily accessible to members of the R.C.M.P. and to members of the security intelligence agency whose creation we recommended in our Second Report. We recommend that the R.C.M.P. and the security intelligence agency should submit plans to the Solicitor General that ensure that, at government expense, copies are made readily accessible to members of the R.C.M.P., personnel of the agency, and all Department of Justice counsel assigned to the R.C.M.P. The goal should be broad acquaintance with our recommendations throughout the R.C.M.P. We do not think it sufficient that members of the Force should know of our recommendations and our reasons only from newspaper accounts or such information as is officially issued by Headquarters. It is especially important that a copy be available to all members who are involved in training programmes, whether they are initial training programmes or programmes for experienced members.

The relationship of deceitful conduct by members of the R.C.M.P. toward the government, to the notion of "unacceptability"

24. It may here be pertinent to give an example of conduct which in our opinion is "unacceptable" even though the Commissioner of the R.C.M.P. may not, perhaps, regard it as covered by any of the adjectives found in section 25(o) of the R.C.M.P. Act. We refer to conscious misleading of a Solicitor General or of a Parliamentary Committee as to some fact, by a member of the R.C.M.P. Such conduct is unacceptable. In this regard we can see no difference between a Commissioner or Deputy Commissioner or other officer of the R.C.M.P. or a Director General of the R.C.M.P. Security Service, and a Deputy Minister or Assistant Deputy Minister or other public servant in any other department of government. In both categories, surely, the public servant, be he policeman or not, is bound to be truthful, candid and forthcoming with his Minister. Indeed, he is "bound" not only by propriety and ethics but also by law. For, if he is not truthful, forthright and candid, it seems to us that he fails to carry out a duty that is implied in his contract of employment — a duty to be all those things to his Minister, and indeed to any committee of Ministers or public servants or of Parliament to which he may be called upon to report. A failure to carry out that duty may quite properly, to use the words found in our terms of reference, be described as an "activity... not authorized by law".

25. When we speak of "truth", "candour" and being "forthcoming", we intend to convey that a Minister is entitled to expect a public servant to meet those standards not only when a Minister expressly asks a question, but even when silence will cause a Minister to be misled or to be ignorant of that which

his position in responsible government should require him to know. It would therefore be unacceptable to attempt to prevent the Minister from learning of illegalities being committed by members of the Force, and it would also be unacceptable not to volunteer such information, if such be known. An Assistant Commissioner of the Force told us:

Q. I think that to bring this thing to a level of understanding, at least, and not necessarily of agreement, do you not see that hiding the truth is a lie, form of lie?

A. No, sir. I see a great difference between lying to a Solicitor General, if he asks you a question, and not volunteering information.

(Vol. 190, p. 28063.)

We fail to appreciate the difference. The same officer told us in January 1980:

I would have thought that after all this time your Commission has been sitting, it would have become rather obvious that the Security Service kept certain operational things from the Solicitor General.

(Vol. 190, p. 28058.)

His candour was startling — even though we had then completed over two years of our inquiry. For, although it is clear from other remarks made by that officer that, in discussing the period up to 1977, he was not suggesting that members of the Security Service had lied to Solicitors General, he clearly accepted that the management of the Security Service had, by its silence "... kept certain operational things from the Solicitor General". He said he was thinking of such things as Operation Cathedral ("the opening of mail was clearly illegal") (Vol. 190, pp. 28053-4). The following question and answer then appear:

Q. ... are you stating today openly and unequivocally that the Force had meant never to let the Solicitor General, whoever he was, know of practices or operations that were not authorized or provided for by law?

A. Yes, sir.

26. Until such a senior officer made those remarks to us, although we had a suspicion that there might be some such underlying reason, we had been prepared to accept the explanations offered to us that several incidents apparently involving lack of candour were either aberrations from the accepted norms of conduct or, in certain cases, could be subject to a different interpretation. We had assumed that the senior management of the R.C.M.P. would find it natural to be candid and open with the civilian authority. The issue of candour to Ministers had already been raised in connection with specific practices, but there had, until then, been no suggestion — at least none that had made an impression upon us — that the issue should be scrutinized in a more general fashion. We referred to the issue in very general terms in our Second Report, Part III, Chapter 1. The issue is reflected in more specific terms in several chapters of this Report: see, for example, all of Part V.

47. When the facts pass from the domain of issues of complicity in, or encouragement or tolerance or knowledge of, wrongdoing, to that of the quality of the conduct of a Minister or public servant in a general sense, we consider that we should be very cautious. While, in so far as the R.C.M.P.'s duties in connection with the protection of the security of Canada are concerned, paragraph (c) permits us to inquire broadly into laws, policies and procedures that affect the exercise of those duties, we draw a distinction between (i) inquiring into past and present laws, policies and procedures and reporting upon them as matters of fact, and (ii) passing judgment on the correctness of the decisions, or sometimes the lack of decision, that have led to the existence or absence of a law or a policy or a procedure. We have tried to avoid the latter as much as possible, for we do not consider that we are empowered to pass judgment on the quality of a Minister's "management". Yet we emphasize that our caution does not apply so as to cause us to refrain from comment if a Minister has been involved in illegality — whether by active participation before or after the event, knowledge of illegal activity combined with a failure to stop it or deal with it in some other way, or wilful blindness.

28. Our terms of reference empower us to conduct investigations to determine "the extent and prevalence of investigative practices or other activities involving members of the R.C.M.P." and "to report the facts relating to any investigative action or other activity involving persons who were members of the R.C.M.P. that was not authorized or provided for by law." No one has suggested to us that we could not report *facts* that might involve persons who are not members of the R.C.M.P. — if doing so were considered by us to be necessary to give effect to our terms of reference. It was, however, forcefully submitted to us that our terms of reference did not authorize us to "investigate" the conduct of non-members of the R.C.M.P. or to "report" our opinions or judgments about their conduct. We think this submission has considerable merit, subject to what we say in the following paragraph. We think it fair to add that this submission was first made, not by counsel for any Minister or public servants, but, very ably, by counsel for a human source.

29. In the case of senior public servants or Ministers, we propose to report upon their conduct as it relates to activities involving members of the R.C.M.P. that were not authorized or provided for by law, in two cases:

Firstly, if we consider that the conduct amounts to:

- (i) active participation before or after an event, or
- (ii) knowledge of illegal activity combined with a failure to stop it or deal with it in some other way, or
- (iii) wilful blindness;

and secondly, if it is related to, or part of, the relationship between government officials and the R.C.M.P. and is thus, in our opinion, relevant to the consideration of the policies and procedures governing the activities of the R.C.M.P. under paragraph (c) of our terms of reference. We will, quite naturally, be referring on a number of occasions to the fact that conduct does not fall within any of the above-noted categories, and hence no criticism of the person involved is warranted.

The conduct of senior public servants, Ministers and other persons not members or ex-members of the R.C.M.P.

27. In this Report we shall also report on the extent to which persons who were senior public servants or Ministers participated in, or knew of and tolerated, the acts of members of the R.C.M.P. reported on. In our Second Report this is what we said concerning our interpretation of our terms of reference in regard to such persons:

45. In the reasons of October 13, 1978, we concluded that our duty to report on the facts "relating to any investigative action or other activity" involving "members of the R.C.M.P. that was not authorized or provided for by law" might result in our reporting "whether members of the R.C.M.P. who, in our opinion, have, or might be held in a court to have, committed a wrongful act, were doing so upon the direction or with the consent or at least without the disapproval of a Minister of the Crown, for that might be a fact which any Attorney General might consider relevant to the process of his deciding whether or not to prosecute the members of the R.C.M.P.". We added that our Report would be incomplete as to relevant facts, and unfair to any members of the R.C.M.P. against whom in our Report we might make a "charge of misconduct" (to use the language of section 13 of the Inquiries Act) and who might otherwise feel that facts tending to exonerate them had not been brought to light, unless we inquired into and reported on the extent to which such members had express or tacit authority from Ministers to perform wrongful acts. We now add that the considerable time we have taken to examine the issues of approval or knowledge or toleration, express or implied, by government officials of wrongful acts by members of the R.C.M.P. has led us inevitably into the receipt of much testimony and the examination of many documents which relate to the relationship between government officials and the R.C.M.P. This testimony and these documents have been invaluable to us in giving us a comprehension of that relationship as a formulation for our recommendations under paragraph (c). As we, in this Report, summarize this evidence as a preliminary to making recommendations as to the future relationship between the government and the R.C.M.P. or between the government and the security intelligence agency, it will be difficult to avoid using language which may appear to some readers as an expression of opinion about the quality of the conduct of a Minister or his competence. Because of this, we think that it is important that we say something about our interpretation of our terms of reference as they may relate to the review of political judgment or the quality of decisions made by Ministers of the Crown.

46. We have had no hesitation in considering ourselves entitled to inquire into, and report on, any implication on the part of such persons in specific acts "not authorized or provided for by law" in which members of the R.C.M.P. are involved, or any implication on the part of such persons in wrongdoing generally by members of the R.C.M.P. This would include complicity or knowledgeable acceptance before the event, and also knowledge after the event. Moreover, we have inquired into, and will report on, the extent to which such persons knew of the existence of any policies or practices of the R.C.M.P., the implementation of which would result in acts not authorized or provided for by law.

30. In the case of other persons (including human sources) who are not members or past members of the R.C.M.P., whose conduct has come before us, their conduct will be reported on by us if they participated actively in a given activity with, or upon the encouragement of, members of the R.C.M.P. Since there may be some doubt as to the ambit of our terms of reference in such cases as far as passing judgment is concerned, we will report only the facts that might involve such persons to the extent considered necessary to give effect to what is clearly within our terms of reference but we will leave it to others to pass judgment on such facts as they affect those persons.

PART II

**GOVERNMENT KNOWLEDGE OF R.C.M.P.
ACTIVITIES
NOT AUTHORIZED OR PROVIDED FOR BY
LAW**

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NOTE BY THE COMMISSIONERS

There have been no deletions to Part II except for two short passages — one, from a letter written by the Honourable Jean-Pierre Goyer to the Honourable Herb Gray (ex. M-23), the other, from a letter written by Mr. Starnes to the Honourable Jean-Pierre Goyer (Ex. HC-2). The nature of these deletions is explained in footnotes found on pages 28 and 29 where we quote from these letters.

August, 1981

INTRODUCTION

1. The mandate of this Commission is to conduct an investigation into the extent and prevalence of the investigative practices or other activities involving members of the R.C.M.P. that are not authorized or provided for by law, to inquire into "the relevant policies and procedures that govern the R.C.M.P. in the discharge of its responsibility to protect the security of Canada" and, further, to "advise as to any further action that the Commissioners may deem necessary or desirable in that public interest". Our investigation of these "relevant policies and procedures" governing the R.C.M.P. has led us to examine the knowledge of the Ministers of the Crown and the Cabinet Committee members responsible for the conduct of the Force in the discharge of its responsibility.

2. In carrying out our mandate we have heard and examined detailed evidence over many months with respect to whether or not responsible Ministers of the Crown (including successive Solicitors General) and senior officials of government were aware of particular activities engaged in by the R.C.M.P. which were not authorized or provided for by law. That evidence is reviewed in Part III of this Report. The question for consideration in the present part is whether those Ministers of the Crown and senior officials of government were made aware of such activities in a general way, that is without being provided with, or requesting, specific instances.

3. In this connection we repeat what was said by this Commission in Part I of its Second Report:

We have had no hesitation in considering ourselves entitled to inquire into, and report on, any implication on the part of such persons in specific acts 'not authorized or provided for by law' in which members of the R.C.M.P. are involved, or any implication on the part of such persons in wrong-doing generally by members of the R.C.M.P. This would include complicity or knowledgeable acceptance, and also knowledge after the event. Moreover, we have inquired into, and will report on, the extent to which such persons knew of the existence of any policies or practices of the R.C.M.P., the implementation of which would result in acts not authorized or provided for by law.

4. Why are we reporting the state of knowledge of senior public officials and Ministers? First, because whether they had such knowledge, and, if they did, what they did or not do in consequence, is relevant to assist the Governor in Council and other readers in appreciating the "policies and procedures" that have in the past governed "the activities of the R.C.M.P. in the discharge of its responsibility to protect the security of Canada". This in turn will enable the Governor in Council and other readers to understand the system of controls which we have proposed in our Second Report.

5. Second, if such knowledge was imparted to a responsible Minister by the Director General of the Security Service or the Commissioner of the R.C.M.P., and a positive direction to cease such activities was not given by the responsible Minister, then, depending upon the particular facts, it may be argued, whether successfully or not, that there was a tacit assent to the continuation of such activities. Such inference, if it were to be drawn properly from the facts, is therefore related to "the relevant policies and procedures that govern the R.C.M.P. in the discharge of its responsibility to protect the security of Canada". It may also be relevant to the position in law of members of the R.C.M.P. who have committed offences. For, while in Part IV of our Second Report we disagree with the contention, it might be contended in a court of law that knowledge at the level of Ministers or senior government officials that the R.C.M.P. had been engaged in illegal activities in a general sense is relevant to the guilt or innocence at law of the individual members of the R.C.M.P. involved in such activities. If they are found guilty of illegal acts, it might be contended that such knowledge is a consideration properly to be taken into account by the court in imposing sentence.

6. We dealt with this issue in our Reasons for Decision of October 13, 1978, (Second Report, Appendix "F") when we said:

Among the facts which the Commission will wish to report in some cases will be whether members of the R.C.M.P. who, in the opinion of the Commission have, or might be held in a Court to have, committed a wrongful act, were doing so upon the direction or with the consent or at least without the disapproval of a Minister of the Crown, for that might be a fact which any Attorney General might consider relevant to the process of his deciding whether or not to prosecute the members of the R.C.M.P. . . .

Finally, to interpret the terms of reference in such a way as to permit the Commission to report on wrongful acts by members of the R.C.M.P. without also reporting on the extent to which they had from Ministers express or tacit authority to perform those acts would not only compel the Commission to deliver an incomplete report on the relevant facts but would also be unfair to the members of the R.C.M.P. who while 'charged' by the Commission (to use the words found in Sections 12 and 13 of the Inquiries Act) would have reason to feel that facts tending to exonerate them perhaps from guilt and perhaps from punishment had not been inquired into, or had not been reported upon, and would never come to the attention of the appropriate Attorney General.

7. Again in Part IV of our Second Report we said:

In conclusion, while the blame to be attached to 'foot soldiers' for breaking the law cannot be absolved by the failure of management to provide clear and proper instructions, the consequences which flow from such law breaking may be affected by that failure. It is a factor that, depending on all the circumstances may properly be taken into account in the exercise of prosecutorial discretion, the determination of the appropriate sentence, or the decision whether to grant a pardon.

8. The issue of whether Ministers of the Crown were aware of illegal R.C.M.P. activities has been explored by taking the testimony of Prime

Minister Trudeau, some former Solicitors General, their Deputies, certain other public servants, the present and some past Commissioners of the R.C.M.P. and the present Director General of the Security Service and his predecessor, covering the period from 1968 onward. We have also examined documents in R.C.M.P. files, which occasionally have included internal R.C.M.P. memoranda summarizing what was said at meetings of Cabinet Committees and of committees of public servants which had been attended by R.C.M.P. officers.

9. When, in the fall of 1978, our counsel first examined some of the persons referred to, it became apparent that our inquiry into this issue — which by this time had been raised by allegations by former Commissioner Higgitt and Mr. Starnes, the former Director General, that the record would show that Ministers had been informed — could not be regarded as thorough unless we had access to the Minutes of meetings of Cabinet and of Cabinet Committees. In our reasons for decision dated October 13, 1978 (Second Report, Appendix "F") we recognized the importance that has been attached by the courts to the confidentiality of Cabinet minutes and other high level minutes and correspondence, but we also listed some potentially countervailing considerations. Later, in reasons for decision delivered *in camera* on February 23, 1979, part of which was reproduced in our Second Report, Appendix "Z", we pointed out that one of those considerations was as follows:

- (e) The interest of persons who have already been witnesses before the Commission, in knowing of documents containing evidence of the conduct of senior officials of the R.C.M.P. and of persons in high levels of government, which may have a bearing on whether the conduct of those witnesses was authorized expressly or by implication, or at least tolerated or condoned.

We added:

Another pertinent consideration is that the documents to be considered are now at least eight years old. In *Sankey v. Whitlam*, . . . Mason J. said:

I also agree with [Lord Reid] that the efficiency of government would be seriously compromised if Cabinet decisions and papers were disclosed whilst they or the topics to which they relate are still current or controversial. But I base this view, not so much on the probability of ill-informed criticism with its inconvenient consequences, as upon the inherent difficulty of decision-making if the decision-making processes of cabinet and the materials on which they are based are at risk of *premature* publication. . . I should have thought that, if the proceedings, or the topics to which those proceedings relate, are no longer current, the risk of injury to the efficient working of government is slight and that the requirements of the administration of justice should prevail. . . [The documents] are Cabinet papers, Executive Council papers or high level documents relating to important policy issues [. . . but . . .] they are not recent documents; they are three and a half to five years old. They relate to issues which are no longer current, for the most part policy proposals of Mr. Whitlam's Government which were then current and controversial but have long since ceased to be so, except

for the interest which arises out of the continuation of these proceedings.¹
[our emphasis]

We also stated:

... it is desirable and in the public interest not only to produce in public such documents as disclose government malfeasance, but also, when government malfeasance is alleged or suspected, to produce such documents as exonerate those suspected from any such suspicions. In the courts, what is commonly described as Crown privilege does not apply in criminal cases, as Viscount Simon said in *Duncan v. Cammell Laird*.² We have already observed that it does not apply to protect an accused, nor ought it to apply so as to prevent an accused from raising a defence. As Kellock J. said in the Supreme Court of Canada in *Reg. v. Snider*:³

... there is ... a public interest which says that 'an innocent man is not to be condemned when his innocence can be proved': per Lord Esher M.R. in *Marks v. Beyfus*.⁴

Thus evidence of sources of police information "must be forthcoming when required to establish innocence at a criminal trial": per Lord Simon of Glaisdale in *D. v. National Society for the Prevention of Cruelty to Children*.⁵ It is true that the proceedings before this Commission are not criminal proceedings and this is not a court of law. Nevertheless, questions have arisen before this Commission as to whether members of the R.C.M.P. have committed criminal acts, and the Commission may conceivably in its report make a 'charge' of misconduct against them. Those members have a legitimate interest in being able to make representations to the Commission, if the facts permit them to do so, that their conduct was in accordance with policy accepted, condoned, or even encouraged by senior officials of government and cabinet ministers. Yet they are in no position to do so unless the evidence in this regard is made public. (This is the fifth of the considerations listed in the Commission's reasons of October 13, 1978.) Moreover, the conduct of such senior officials and Cabinet Ministers may be the subject of a 'charge', and they cannot effectively make representations to the Commission unless the documents disclosing policy vis-à-vis the R.C.M.P. in relation to these matters are made public.

10. Those observations were delivered in regard to the rendering public of certain passages from high level documents that had already been referred to by former Commissioner Higgitt and Mr. Starnes at *in camera* hearings. The same reasoning applies to the question whether, if we, as Commissioners, obtained access to them, we should be able to produce them, even *in camera*, in the presence of such persons as counsel for Messrs. Higgitt and Starnes.

¹ (1978-79) 142 C.L.R. 1 at pp. 97-100. There are slight clerical differences between the decision in the unofficial form in which it was available to us in February 1979, and the decision as now reported in the Commonwealth Law Reports. We have revised our quotation here so as to comply with the reported decision.

² [1942] A.C. 624 (House of Lords).

³ [1945] 4 D.L.R. 483 at pp. 490-1.

⁴ (1890) 25 Q.B.D. 494 at p. 498.

⁵ [1977] 2 Weekly L.R. 201 at p. 221.

11. Because our counsel had asked the government to produce some such documents, Order-in-Council P.C. 1979-887 (reproduced in our Second Report, Appendix "J") was adopted on March 22, 1979. It read, in part:

WHEREAS the said Commissioners have requested access to and copies of Cabinet and Cabinet Committee minutes which are relevant to the matters within the Commission's terms of reference as set out in the said Order in Council;

WHEREAS it is a matter of convention and practice in Canada that access to records of Cabinet meetings and of Cabinet Committee meetings has been restricted to the Prime Minister and the Ministers who were members of the Cabinet at the time the meetings took place, the Secretary to the Cabinet, and such persons on the Secretary's staff as the Secretary authorizes to see them, on a confidential basis, where necessary for the proper discharge of their duties;

WHEREAS this convention and practice is, in the opinion of the Committee, essential for the proper functioning of the Cabinet system of government;

WHEREAS the Prime Minister, on behalf of his Ministry, has recommended to the Committee that, having regard to the particular nature of the inquiry being conducted by the Commission, an exception be made to the convention and practice in order to enable the Commissioners to ascertain whether any such documents relating to the terms of reference of the Commission contain evidence establishing the commission of any act involving members of the RCMP or persons who were members of the RCMP that was not authorized or provided for by law, or evidence implicating a Minister in such act; and

WHEREAS the Secretary to the Cabinet, as the custodian of the records of all Cabinet and Cabinet Committee meetings of previous ministries, has recommended the adoption of such an exception in respect of such records.

THEREFORE, the Committee of the Privy Council, on the recommendation of the Prime Minister, and with the concurrence of the Secretary to the Cabinet, advise that:

(1) subject to paragraph (5)* the Commissioners shall be granted access to read the minutes of any Cabinet or Cabinet Committee meeting held prior to the establishment of the Commission which relate to the terms of reference of the Commission as set out in Order in Council P.C. 1977-1911 and which on reasonable and probable grounds they believe provide evidence establishing the commission of any act involving members of the RCMP or persons who were members of the RCMP that was not authorized or provided for by law, or evidence implicating a Minister in such act;

(2) where the Commissioners are of the view that any minute or portion of a minute to which they have been granted access as provided for in paragraph (1) above contains evidence establishing the commission of any act involving members of the RCMP or persons who were mem-

* This paragraph is not quoted because it relates to access to Minutes of the administration of the Rt. Hon. John G. Diefenbaker.

bers of the RCMP that was not authorized or provided for by law, they may request the Secretary to the Cabinet to deliver a copy of any such minute, or portion thereof, to the Commission, and the copy of any such minute or portion thereof so requested shall be delivered to the Commissioners;

- (3) if the Commission after a hearing on the issue, wishes to make public the contents of any such Minute or portion thereof referred to in paragraph (2), or to refer publicly to the existence of such Minute or portion thereof, it shall first request the Secretary to the Cabinet to secure from the appropriate authority declassification of such Minute or portion thereof;
- (4) the Secretary to the Cabinet shall provide the Commissioners access to such indexes or other information as may reasonably be necessary to enable them to determine the minutes of the Cabinet or Cabinet Committee meetings to which they wish to be granted access for the purposes of paragraph (1) above;

12. As a result of this Order-in-Council, we, from time to time, read certain Minutes of meetings of the Cabinet, of Cabinet Committees and meetings of Ministers of the administration of the Right Honourable Pierre Elliott Trudeau from 1968 to 1974, certain drafts of such Minutes, and certain handwritten notes of such meetings. The Clerk of the Privy Council interpreted paragraph (1) of P.C. 1979-887 in a liberal fashion so that we had access to such documents upon request.

13. However, there were limitations on our ability to satisfy ourselves as to whether we had seen all such minutes and documents which were relevant to our concerns. Those limitations arose out of the convention of the confidentiality of cabinet documents. That convention was modified to a certain extent under the terms of the Order-in-Council. Under the Order-in-Council, before we could examine any minute or document, we had to have some ground for believing that it was relevant. We could arrive at that conclusion in one of two ways. Either some external source, such as testimony of an individual or examination of other documents, would have to ignite our interest, or a review of the indexes to Cabinet documents would have to give some inkling of relevant information which might be found in a particular minute or document.

14. With respect to external sources, we reviewed such documents in the possession of the R.C.M.P. and asked such questions of witnesses as we considered necessary to identify possible relevant minutes and documents relating to meetings of Ministers, whether in Cabinet, Cabinet committee or otherwise. We know of no other way to tackle this aspect and we consider what we have done in this regard to have been as thorough as it could be.

15. We are less sanguine about the process of examination of the indexes to Cabinet documents and minutes. For this process to work in a wholly satisfactory way, we would have to be sure that the indexes disclosed sufficient information to enable us to identify any relevant minute or document. We have no way of satisfying ourselves that they do. Yet, the alternative to the process followed would have been an examination of all Cabinet documents and minutes — something which would clearly not have been acceptable to any

government or the custodians of the documents and minutes. However, we are bound to note that, without such full and unrestricted access, our inquiry must be regarded as being less thorough than if we had had unlimited access.

16. However, we have had access to those minutes that appeared from either other sources or an examination of the indexes to be of potential importance, particularly during the period of November and December 1970. To that extent we believe our inquiry to have been as thorough as is consistent with the traditions of Cabinet confidentiality. It has been a long and difficult process, but the result, we think, enables the history to be narrated accurately in what follows, so far as is allowed by the sometimes enigmatic quality of written records and the failure of human memory.

17. As a result of the access provided pursuant to Order-in-Council P.C. 1979-887, dated March 22, 1979, we attended at the Privy Council Office, on March 30, 1979, to examine the minutes of Cabinet meetings and meetings of Cabinet Committees that, from the evidence of such witnesses as Mr. Starnes and Commissioner Higgitt, appeared to us as of potential relevance to the issues before us. As a result of reading a section of the minutes of the meeting of the Cabinet Committee on Priorities and Planning that had been held on December 1, 1970, we requested delivery to us of a copy of that part of the minutes. For reasons that included the intervention of two federal elections, in May 1979 and February 1980, and a question whether we had satisfied the conditions set forth in P.C. 1979-887 that entitled us to such delivery, it was not effected until April 30, 1980. The delivery was not effected under the provisions of the Order-in-Council. The Clerk of the Privy Council stated, in his letter delivering the minutes to us, that the Deputy Attorney General and government counsel had advised him that our letters requesting delivery of the whole or a portion of the minutes of the meeting did not comply with the provisions of Order-in-Council P.C. 1979-887. The Clerk of the Privy Council further advised that

Notwithstanding this conclusion, the Prime Minister, in the exercise of his prerogatives, has decided to authorize government counsel to deliver to you a copy of the entire portion of the minute of the December 1, 1970 meeting referred to in your letter of April 10, 1979, together with related material. The Prime Minister has made this decision in order to remove any question whether the Commission had before it the material necessary to enable it to arrive at a final determination of the matters under consideration by it.

At the same time we were given a copy of some longhand notes that had been made at the meeting of December 1, 1970, by the two recording secretaries, Mr. L.L. Trudel and Mr. M.E. Butler. Hearings based on these documents were held *in camera* on the following dates, when the following witnesses were heard:

June 26, 1980 — Mr. John Starnes; Mr. Leonard Lawrence Trudel (Vol. C96)

July 22, 1980 — Right Honourable Pierre Elliott Trudeau (Vol. C98)

September 18, 1980 — Mr. Robert Gordon Robertson (Vol. C108)

December 4, 1980 — Mr. Raoul Carrière; Mr. Leonard William Higgitt; Mr. Peter Michael Pitfield (Vol. C117A)

January 28, 1981 — The Honourable John Napier Turner; Mr. Donald Henry Christie (Vol. C118)

February 25, 1981 — Mr. Michael E. Butler (Vol. C119)

At these hearings the extract from the Minutes, the extract from the notes by Mr. Trudel and the extract from the notes by Mr. Butler were marked as a single exhibit: Ex. VC-1.

18. Two of our senior counsel were thoroughly familiar with the evidence that had been developed, with a great deal of difficulty, in regard to studies and discussions at high levels of government in 1970 concerning the difficulties faced by the R.C.M.P. in carrying out its security and intelligence work in the framework of existing laws. One or other of these two counsel, or our Secretary, interviewed every additional person who was shown by the minutes as being present at the meeting of December 1, 1970, Cabinet Ministers and officials alike, except one who was living in Europe. Every person interviewed, as was the case with every person who testified, lacked any memory of the words attributed to Mr. Starnes in Mr. Trudel's notes, or of the discussion recorded in the notes of the two secretaries and in the Minutes. We therefore called to testify only those persons who were most likely to have been specially interested in the subject matter because of the positions they held in 1970, and who therefore were more likely to have a memory of the matter than the others.

19. When we were about to prepare our Report on what had occurred at various discussions in 1970, including that of December 1, the Privy Council Office delivered to us (on March 27, 1981) a copy of some longhand notes that had been made at a meeting of the Security Panel on November 27, 1970, by its recording secretary, Mr. Donald Beavis. We had already inquired, as best we could, into certain discussions that occurred at that meeting. We were advised by the Privy Council Office that these longhand notes had been discovered by the Privy Council Office staff not long before they were delivered to us. Mr. Beavis, who had testified before us on other matters on February 12, 1980 (Vol. C84, released publicly in edited form as Vol. 313), died in August 1980. Because the notes contained words which Mr. Beavis attributed to Mr. Starnes at that meeting that were strikingly similar to the words attributed to Mr. Starnes in Mr. Trudel's handwritten notes of the December 1 meeting, we held hearings as soon as possible — on April 2, 1981 — at which the witnesses were Mr. Starnes and Mr. R. Gordon Robertson (Vol. C129A). In 1970 Mr. Robertson was Secretary to the Cabinet and Clerk of the Privy Council, and he chaired the meeting of the Security Panel held on November 27. Neither Mr. Starnes nor Mr. Robertson had any memory of the words which the notes attributed to Mr. Starnes. As we considered it to be unlikely that other persons, shown in the minutes as having been present, would have any better memory than Mr. Starnes and Mr. Robertson of the events of ten years ago, we have not called any more of the persons present to testify in regard to what Mr. Starnes said at that meeting. In any event, we are, in our Report, treating the notes as acceptable evidence that Mr. Starnes did utter the words attributed to him in Mr. Beavis' notes.

20. As a final precaution, to ensure as best we could that there were no other documents or notes which we had not seen or been aware of, our Secretary wrote, on April 9, 1981, to the Clerk of the Privy Council. That letter read as follows:

As you are aware, the Commission has inquired into certain subjects which appeared on the agenda of the following meetings:

1. November 24, 1970 — Meeting of the Cabinet Committee on Priorities and Planning
2. November 27, 1970 — Meeting of the Special Committee of the Security Panel
3. December 1, 1970 — Meeting of the Cabinet Committee on Priorities and Planning
4. December 21, 1970 — Meeting of the Cabinet Committee on Security and Intelligence

The portion of the November 27, 1970 meeting which is of interest to the Commissioners is that relating to the discussion of an R.C.M.P. paper entitled "Police Strategy in Relation to the F.L.Q.". In that connection the Commissioners have examined the minutes of the meeting and the handwritten notes taken at the meeting by the recording secretary, Mr. Beavis.

With respect to the December 1, 1970 meeting the relevant portion is that which dealt with Cab. Doc. 1323-70, which consisted of the "Maxwell Memorandum" and a two-page document entitled "Various Questions Raised by Law and Order Paper". With respect to this meeting the Commissioners have seen the minutes of the meeting and the handwritten notes taken at the meeting by the recording secretary, Mr. Trudel, and by the secretary of the committee, Mr. Butler.

With respect to the December 21, 1970 meeting the relevant portion is that which dealt with a paper entitled "R.C.M.P. Strategy for Dealing with the F.L.Q. and Similar Movements". The Commissioners have seen the minutes of the meeting dealing with this subject matter. They have also seen a memorandum dated December 23, 1970 from Mr. Starnes to his immediate subordinate recording what took place at the December 21st meeting with regard to that paper.

The purpose of this letter is to enquire from you as to whether, in addition to the documents the Commissioners have seen, as noted above, there are, so far as you are aware, any other documents in the possession of the Privy Council Office or elsewhere which record in any way the discussions which took place at the four meetings mentioned above with respect to the topics of concern to this Commission. The Commissioners would like your advice as to the existence of any and all such documents of which you are aware.

Without limiting the above request, the Commissioners would like to examine the handwritten notes of the recording secretary at the meeting of December 21, 1970 or any other drafts or notes that may be available as they relate to the discussion of the documents mentioned above.

Also, from an examination of the minutes of the November 27th meeting of the Security Panel and Mr. Beavis' handwritten notes made at that meeting, it appears most likely that the minutes were prepared not only

from his notes but from someone else's notes. Since Mr. Wall was also at that meeting, Mr. Robertson, in his testimony before the Commission, speculated that it was likely that Mr. Wall also had notes of the meeting. We have written to Mr. Wall asking him if he has any such notes in his personal possession but, having regard to the practice in the Privy Council Office, it is more likely that his notes, if they still exist, are in the possession of the Privy Council Office. The Commissioners would like to have those notes also made available to them.

I look forward to receiving your advice on the above matters.

The reply from the Clerk of the Privy Council, dated April 22, 1981, is as follows:

You wrote to me on April 9, 1981, enquiring about documents in the possession of the Privy Council Office, or elsewhere, which record in any way the discussions which took place at four meetings of Ministers and Senior Officials held during November and December, 1970. You asked on behalf of the Commissioners for my advice as to the existence of any and all such documents of which I am aware.

Following receipt of your letter, I instructed the Assistant Secretary, Security and Intelligence, to provide me with the information you requested. He and his staff, with the assistance of Privy Council Office Central Registry staff, have now completed a search of files touching upon the meetings in question, as well as some subject-matter files which it was felt might possibly have a bearing on the issues.

The search of Privy Council Office material has not established the existence of any material not previously identified for, and seen by, the Commissioners, or the Chairman acting on their behalf. In particular, we have found no handwritten notes of the recording secretary, or other notes relating to the discussions, which took place at the meeting of the Cabinet Committee on Security and Intelligence on December 21, 1970. No handwritten record of the discussion in the Security Panel at its meeting on November 27, 1970, other than that apparently recorded by Mr. Beavis, has been located. In this connection, I note that you have already written to Mr. Wall.

In reviewing the meetings referred to in your letter, I note that the Commissioners, but in one case the Chairman only, have seen or taken delivery of the following documents and written material relating to the agenda items of interest to the Commission:

1. *November 24, 1970* — Meeting of the Cabinet Committee on Priorities and Planning.
 - Minutes of the meeting.
 - Draft minutes of the meeting.
 - Handwritten notes of the recording secretary.
2. *November 27, 1970* — Meeting of the Special Committee of the Security Panel.
 - Minutes of the meeting.
 - Handwritten notes of the recording secretary (apparently Mr. Beavis).

3. *December 1, 1970* — Meeting of the Cabinet Committee on Priorities and Planning.

- Minutes of the meeting.
- Draft minutes of the meeting.
- Handwritten notes of the recording secretary (Mr. Trudel).
- Handwritten notes of the secretary (Mr. Butler).

4. *December 21, 1970* — Meeting of the Cabinet Committee on Security and Intelligence.

- Minutes of the meeting.

As far as I, and my staff, are aware, this list represents the entirety of the material in the custody of the Privy Council Office which records the discussions which took place with respect to the matters referred to in your letter.

One further issue must be addressed in response to your letter. You have asked me to advise the Commissioners of the existence of documents of the kind to which you have referred, and of which I am aware, not only in the Privy Council Office, but elsewhere. You may wish to note that the existence of any record of the discussions at Cabinet and Cabinet Committee meetings taken or held by other than the Cabinet Secretariat would be a clear breach of the rules under which we have operated for many years. No one other than Secretariat officials, whose duty it is to record the sense of the discussion and to prepare the official minutes and decisions of the meeting, is authorized to make a record of it. Although the rule apparently has been breached from time to time by officials of other departments and agencies, I have no possible way of knowing if and when this occurs. However, you should be aware that, with the exception of documents discussed in previous correspondence with the Commission and the memorandum by Mr. Starnes, referred to in your letter, none have been drawn to my attention.

21. In response to our letter to him, referred to in the above exchange of correspondence, Mr. Wall advised us verbally that he had no notes in his possession and that he had destroyed all his notes while he was still employed in the Privy Council Office.

The nature of the evidence

22. A variety of witnesses, including Prime Minister Trudeau, several former or current Ministers of the Crown, Deputy Ministers and senior government officials as well as some former Commissioners and the current Commissioner of the R.C.M.P. and the former and the current Directors General of the Security Service, gave evidence with respect to the knowledge, or lack thereof, of responsible Ministers of the Crown and senior officials of government as to the particular activities of the R.C.M.P. which we have examined because they give rise to legal concerns. Several of them also gave evidence with respect to a body of documents presented before us and known collectively as the 'Law and Order Documents'.

23. Certain of these witnesses also gave evidence as to whether Senator George McIlraith was made aware, at a time when he was Solicitor General

and therefore responsible for the conduct of the Security Service, that the Security Service engaged in illegal activities in carrying out its responsibility to protect the security of Canada. Our summary of the evidence in this regard, and our conclusions, are found in a section at the end of this chapter.

24. The Law and Order Documents comprise two streams of documentation. The first stream began with the Record of Decision of the Cabinet Committee on Priorities and Planning of May 5, 1970 (Ex. M-86, Tab 2). That Committee directed that an interdepartmental committee comprised of senior officials of government prepare a "Law and Order" paper for consideration by the Cabinet Committee on Priorities and Planning (C.C.P.P.). The interdepartmental committee, formed as a result of this direction, was known as the Interdepartmental Committee on Law and Order (I.C.L.O.) and was chaired by the then Deputy Minister of Justice, Mr. Donald S. Maxwell. The final product of the Committee was a memorandum to the C.C.P.P. dated November 20, 1970, and expressed to be from the I.C.L.O. (Ex. M-36, Tab 7; MC-6, Tab 3). That memorandum, known before us as the Maxwell Memorandum, was ultimately dealt with by the C.C.P.P. at its meetings of November 24, 1970, and December 1, 1970.

25. The second stream of documentation comprising the Law and Order Documents finds its origins in the Cabinet Committee on Security and Intelligence (C.C.S.I.). At a meeting of the C.C.S.I. on November 6, 1970, the Committee requested that the R.C.M.P. prepare a Report setting out the Force's strategy to deal with the F.L.Q. and other similar movements (Record of Decision of the C.C.S.I. dated November 6, 1970, Ex. M-86, Tab 7). The final Report authorized by the R.C.M.P. pursuant to this request, entitled "R.C.M.P. Strategy for Dealing with the F.L.Q. and Similar Movements", (Ex. M-36, Tab 21; M-22) and being Cabinet Document S & I 14, came before the C.C.S.I. at its meeting of December 21, 1970.

A. THE INTER-RELATIONSHIP OF THE LAW AND ORDER DOCUMENTS AND THE ISSUE OF GOVERNMENT KNOWLEDGE OF SECURITY SERVICE ACTIVITIES

26. Given the existence of the Law and Order Documents and the contents of certain of these documents, the question arises whether Ministers or senior officials responsible for the conduct of the Security Service, were advised in 1970 by representatives of the R.C.M.P. that the Security Service, in carrying out its responsibilities, had, on occasion, engaged in activities which were "not authorized or provided for by law".

(a) The evidence of former Commissioner Higgitt

27. Former Commissioner Higgitt testified before us that he "did indeed" discuss with Ministers the concept that there are times when the Security Service of the R.C.M.P. needs to break the law, or may need to do so, if it is to do its job (Vol. 87, p. 14315). Mr. Higgitt stated that he did not have a precise

memory with respect to such a discussion or discussions but that he had had from time to time discussions at which he told Ministers of various things of this nature (Vol. 87, p. 14316). He testified that there were at least one or two documents to support his statement. In later testimony Mr. Higgitt stated that in these discussions what was being discussed was not the Security Service transgressing the law but rather "situations where this kind of thing [transgressing the law] was a possibility" (Vol. 87, p. 14358).

28. Mr. Higgitt was requested to indicate to us the documents upon which he relied to support his statement. He marked the following passages of the Law and Order Documents, which at the time were marked as exhibits before the Commission for identification only and thus not then disclosed publicly:

Ex. M-22: Memorandum for the Cabinet Committee on Security and Intelligence dated December 17, 1970, from D.F. Wall, Secretary, with attached copy of memorandum prepared by RCMP entitled "RCMP Strategy for Dealing with the F.L.Q. and Similar Movements" attached:

At pp. 2-3 of the RCMP paper:

If such continuing revolutionary activities are to be effectively countered, an increased effort to penetrate movements like the FLQ by human and technical sources will have to be undertaken. We have had only limited success in being able to penetrate the FLQ and similar movements with human sources. Changes in existing legislation will be required if effective penetration by technical means is to be achieved. The greatest bar to effective penetration by human sources is the problem raised by having members of the RCMP, or paid agents, commit serious crimes in order to establish their bona fides with the members of the organization they are seeking to infiltrate. Among other things, this involves the difficult question of providing some kind of immunity from arrest and punishment for human sources (usually paid agents) who have ... to break the law in order successfully to infiltrate movements like the FLQ. What should be the responsibility of the government towards a member of the Security Service or an agent paid by it who is arrested for committing a crime in the line of duty as it were? What measures can be suggested by the law officers of the Crown to ensure that such persons escape a jail sentence and a criminal record without prejudice to their safety? Perhaps those clauses of the Letters Patent of the Governor General having to do with pardon might be resorted to in such cases, but it is difficult to see how this could be done without revealing the true role of the person concerned.

It will be obvious from a reading of the account of the discovery by the RCMP of Mr. Cross and his abductors that this probably could not have been successfully accomplished without the interception of telephone conversations and that electronic eavesdropping was of assistance to the investigation. Yet it should be realized that the application of telephone interception techniques in coping with the FLQ, and, indeed, with similar revolutionary activity across Canada, has only been possible by a most liberal interpretation of the provisions of the Official Secrets Act. The Report of the Royal Commission on Security makes a number of useful comments about the interception of telephone conversations and electronic eavesdropping, and, in particular, about the importance of ensuring that any legislation contemplated to deal with such matters should contain a

clause or clauses exempting interception operations for security purposes from the provisions of the statute.

At p. 5:

10. In addition to these broad strategic plans, we propose to intensify our efforts in such obvious ways as the infiltration of the FLQ, selected surveillance, recruitment of members of revolutionary groups and the development of improved techniques to collect, collate and assess raw intelligence, e.g., computers and information systems analysis.

Ex. M-23: Letter dated July 27, 1971, from the Honourable Jean-Pierre Goyer to the Honourable Herb Gray — re access for RCMP Security Service to records of Department of National Revenue, Income Tax Branch:

... *To do this successfully it would be necessary to have access to your Income Tax Branch Records.

I understand Section 133 of the Income Tax Act creates difficulties in this regard but if you agree, I would like to determine by means of discussions between your officials and representatives of my department whether the requirement of the Security Service could in fact be met within the framework of existing laws and regulations and in a manner which would attract no attention or criticism.

Ex. M-26: Minutes of meeting of the Cabinet Committee on Security and Intelligence held December 21, 1970, at p. 9:

II. RCMP Strategy for Dealing with the FLQ and Similar Movements

The Committee agreed to defer consideration of document S & I-14 dated December 16, 1970, on this topic until a future meeting.

Ex. M-27: Memorandum dated December 23, 1970, from Mr. Starnes re: meeting of Cabinet Committee on Security and Intelligence December 21, 1970, at p. 2:

5. The Prime Minister said that he assumed I would like to have some discussion of the RCMP paper dealing with strategy, and, as a consequence, suggested that it be put aside to a later date. I assume that in practice this means that it will now not be taken until the Prime Minister returns from his Far Eastern tour late in January. Perhaps this is not too important except insofar as the paper we put up deals with the vexing problem of telephone interception. I do not think that we should sit idle waiting until the end of January on this score. I suggest, therefore, that Mr. Bennett, or some other competent person, get in touch with the Justice Department and find out precisely what is now being done on:

(a) Wiretapping legislation.

(b) Amendments to the Official Secrets Act.

Ex. M-29: Minutes of a meeting of the Special Committee of the Security Panel dated November 10, 1970, at p. 4:

In relation to the Interdepartmental Committee on Law and Order, the Deputy Minister of Justice said that, once an evaluation of the FLQ and similar organizations elsewhere was available through Mr. Côté, his department would be attempting to produce a new document for the end of

* Here the letter refers to the purpose for which the information would be sought.

November. He envisaged that the new paper would raise questions for ministerial decision —

(i) as to alternatives to make the security service more effective by removing previously imposed restrictions on infiltration activity: on whether the administration of justice could continue to be based on the acceptance of substantial police forces not responsible to the federal government and which, by this lack of direct control, could either through insistence on jurisdiction or inefficiency work against the national interest.

Ex. HC-2: Security Service, 'In-Camera', Ministerial correspondence:

(a) Letter from Mr. Starnes to the Honourable Jean-Pierre Goyer dated June 3, 1971, at p. 2:

... *To do this successfully, it is necessary to have access to the records of the Department of National Revenue, Income Tax Branch which is difficult to do in the face of Section 133 of the Income Tax Act.

Part of the difficulty, of course, arises from legislation such as the Income Tax Act and certain government regulations which prohibit the dissemination of this kind of information and in some cases provide stiff penalties for so doing. I recognize that there would be political and other difficulties in the way of seeking to amend legislation merely to meet the needs of the Security Service, but, in many cases, and we believe that with Ministerial agreement, arrangements could be worked out with the different departments and agencies concerned to meet our requirements within the framework of existing laws and in a manner which would attract no attention or criticism.

(b) Letter from the Honourable Jean-Pierre Goyer to the Honourable Bryce Mackasey, Minister of Labour, dated July 27, 1971 re access to Master Index of the Unemployment Insurance Commission for RCMP Security Service:

If you agree in principle to my request, I would like to determine by means of discussions between officials of the Unemployment Insurance Commission and representatives of my Department whether the requirement of the Security Service could be met within the framework of existing laws and regulations in a manner which would attract no attention or criticism.

(c) Letter from Inspector R.W. Shorey for the Deputy Director General to the Commanding officer of "A" Division, Ottawa, to the attention of the Officer in Charge of the Security Service, re: Co-operation — Government Departments, at pp. 1-2:

In the Minister of Labour's reply he mentions the provisions of the new Unemployment Insurance Act affecting the release of information, and in that connection we attach pertinent extracts from that Act. In your further discussion with Mr. Urquhart, please bear in mind that we want to convince the U.I.C. that we feel that the Security Service of the R.C.M.P. can be categorized as "such other persons as the Commission deems advisable" (Section 98). In this connection he can be assured that U.I.C. will not be compelled by the Security Service to produce records or documents or to give evidence in any proceedings.

* Here the letter refers to the purpose for which the information would be sought.

The type of information we seek from U.I.C. is as set out in paragraph 3 of the attached copy of Sgt. Claxton's memorandum. You must make a point of assuring U.I.C. that the information they give us in this connection will be handled with the greatest secrecy and used only as investigative leads in security investigations.

29. At the time that Mr. Higgitt marked the foregoing passages from the Law and Order Documents, the documents had not been declassified and could not, therefore, be made public. In the result it was, therefore, not then possible to discuss in public whether the passages relied upon by Mr. Higgitt in fact support his evidence as to discussions he alleged took place with his Ministers.

30. With reference to the passages so marked by him Mr. Higgitt testified that those documents "... are only examples, and there are other examples" (Vol. 87, p. 14327). He testified further that those marked passages support his

evidence ... that whether or not the acts were 'illegal' or 'not legal' is a matter for perhaps others to decide but that, in fact, they were not done without the general knowledge, at least, and again I return to the words 'political masters'.

(Vol. 87, p. 14325.)

31. This statement by Mr. Higgitt suggests that the documentary passages marked by him support the proposition that his Ministers knew of past and existing operational practices of the R.C.M.P. Later in his testimony, however, when asked what he meant by the word "acts" in the testimony just quoted, (Vol. 87, p. 14325) Mr. Higgitt stated:

It is probably fair to say investigative procedures which involved the possibility of these situations arising.

(Vol. 87, p. 14326.)

(b) The evidence of Mr. John Starnes

32. Mr. Starnes testified that having, in the first few months of his tenure as Director General, become aware of "the scope of the problem", he decided that it should be raised with senior officials and Ministers. He testified before the Commission that documents establish that he did so (Vol. 90, p. 14947). Further, he gave evidence as follows:

It is quite clear that in the Law and Order context, the question of the commission of crime in the national interest was clearly discussed by Ministers. There is no doubt about that. It is a matter of record. The same problem was raised in another forum, namely, the Cabinet Committee on Security and Intelligence, and, therefore, one should not forget that there has been or there was this dual avenue of discussion of the same problem.

(Vol. 106, pp. 16620-1.)

(c) The first stream of Law and Order Documents

33. Following the request by the C.C.P.P. in its decision of May 5, 1970 for the preparation by an inter-departmental committee of a Law and Order paper, the R.C.M.P. prepared such a paper and submitted it to the I.C.L.O. at its meeting of July 8, 1970 (Ex. M-36, Tab 5; Ex. MC-6, Tab 1). In discussing

the placing of undercover sources in subversive organizations, the following statement was made by the authors of the paper (para. 6):

A serious problem arises in the placement and development of sources in the more violence-prone groups, e.g. ... in order for a source to penetrate any of these groups to a point where he can provide useful information, he must be prepared to participate, (the authorities must be prepared to support his participation) in the activities of the group. That would require that he become involved in criminal acts. At the present time this is not permitted....

On the face of it this paper makes it clear that the then policy of the R.C.M.P. was not to permit sources to become involved in the commission of criminal acts to establish their bona fides in penetrating such organizations. The paper, however, does underline the risks inherent in the penetration of such organizations.

34. The Minutes of the Meeting of the Special Committee of the Security Panel dated November 10, 1970 (Ex. M-29) recorded in part as follows:

In relation to the Inter-departmental Committee on Law and Order, the Deputy Minister of Justice said that ... his Department would be attempting to produce a new document for the end of November. He envisaged that the new paper would raise questions for Ministerial decision:

(i) as to alternatives to make the Security Service more effective by removing previously imposed restrictions on infiltration activity...

It is reasonably clear on the evidence that the "previously imposed restrictions on infiltration activity" referred to the policy that agents of the Security Service were not to engage in criminal activities in infiltrating violence-prone organizations. Mr. Maxwell, who at the time of these Minutes was the Deputy Minister of Justice, testified that certain kinds of infiltration "were frowned upon ... those kinds that required participation in criminal activity" (Vol. C66, p. 9158). This, he said, involved penetration of "radical groups ... that as a price of admission required people to do criminal things". In his testimony he agreed that the groups with which the authorities were concerned at that time "... were, by and large, all radical groups ..." and further that if effective penetration was to take place "the risk that the penetrator will have to engage in illegal activities is axiomatic ... the price of penetration may well be that sort of thing" (Vol. C66, p. 9162).

35. The next relevant document prepared by the R.C.M.P. was entitled "Law and Order — suggestions for Improving R.C.M.P. Capabilities" (Ex. M-36, Tab 6; MC-6, Tab 2). This paper is undated, but counsel for the R.C.M.P. advised that it was prepared on or about November 15, 1970 (Vol. 101, p. 16053). Mr. Starnes, in his evidence, stated that, while he was not certain, he speculated that copies of this paper were disseminated to the members of the I.C.L.O. Mr. Ernest Côté, then Deputy Solicitor General, testified that he assumed it had been so disseminated (Vol. C77, p. 10606).

36. The paper, *inter alia*, enunciated several problems faced by the R.C.M.P. "in its efforts to fulfill its internal Security role", one of which was that "it ...

is faced with an apparent insoluble dilemma in regard to penetration of terrorist organizations . . . ”.

37. In discussing that problem, the paper stated:

Examination of the Rules of Evidence

Although there doesn't seem to be any way that the Rules of Evidence (statute and common law) can be altered to sanction the use of *agent provocateurs* in obtaining convictions, it is to be recognized that penetration of terrorist cells by police agents will inevitably involve commission of crimes on their part to establish their *bona fides*. A similar difficulty would exist in connection with terrorist cell members not under police control who can be induced to operate in place. Surveillance, (human and technical) and inducements made to terrorists to 'defect' are useful aids to investigation but they are not anywhere near as effective as an agent in place...

The question that must be asked is whether we as a police force can go outside the rule of law to detect criminal activities. If affirmative, this could be done through penetration by informer-members or non-members. Particularly in the case of non-members, we must be prepared to pay them well and protect them under all circumstances.

Although it is evident that legal changes are required and not police policy changes, it appears that that may be politically impossible in a democracy like Canada except by way of Federal legislation by Order-in-Council (secret, not published). Possibly we require something similar to the European system, where the police can work outside the rule of law to detect crimes and penetrate illegal organizations. In this system the court acts as an inquisitionist, as opposed to merely an umpire, in our system — where the court diligently sees that both sides of the controversy stay and play within the strict rules of evidence.

This paper indicated that the Security Service was then making attempts to infiltrate violence-prone organizations and that the entrance fee could involve the commission of a criminal act or acts. The paper did not indicate that such acts were at that time being committed by agents of the R.C.M.P. but rather asked the question whether such agents should be permitted to go outside the law to effect their purpose successfully.

38. The next key document is the Maxwell Memorandum, dated November 20, 1970, to which we have previously referred (Ex. M-36, Tab 7; MC-6, Tab 3). A draft of this document, which was substantially the same as its final form, was dealt with by the I.C.L.O. at its meeting of November 23, 1970. Mr. Starnes returned to his duties on that day, following a lengthy illness. He has no actual memory of the discussion that took place at this meeting. In a memorandum for file, Assistant Commissioner E.W. Willes of the R.C.M.P. summarized the discussion that took place at that meeting (Ex. M-36, Tab 10; MC-6, Tab 4). That memorandum states in part as follows:

The Memorandum to Cabinet was not received by the Committee members until the afternoon of November 22. Consequently, several of those present pointed out that they had not had an opportunity to study it in detail. . . .

The Deputy Solicitor General . . . also mentioned item (b) of Police Operations (Inherent Contradiction) and touched upon the difficulty that the Security Service has in infiltrating Terrorist groups such as the FLQ . . .

Deputy Commr. Carrière then offered criticism of the two items on the Administration of Justice (Police Organization) and Police Operations (Inherent Contradiction) . . .

Deputy Commr. Carrière then went into more details in describing the difficulties that the Force faces in penetrating the FLQ Cells and organizations and pointed out the difficulty that we face when an Agent or even a regular member is manoeuvred into a position when he has to participate in a serious criminal offence. Some discussion then followed as to the position of the Federal Government should an Agent of the police become involved in a serious crime during the course of his duties and the thought was expressed that the Government would undoubtedly not support him in the light of present policy...

39. The Maxwell Memorandum was distributed to the members of the C.C.P.P. for discussion at its meeting of November 24, 1970. The addendum to the agenda for that meeting of the Cabinet Committee (Ex. M-36, Tab 12) discloses that CAB. DOC. 1323-70 was circulated. The evidence discloses that the Cabinet Document consisted of the Maxwell Memorandum and a two-page document entitled: "Various Questions Raised by Law and Order Paper". This document contained a list of questions for consideration, the seventh of which was: "What should be done to eliminate inherent contradiction in existing Security Service which turns around the question of crime in the national interest?"

40. The portion of the Maxwell Memorandum that is relevant to the issues considered here is entitled: "*Police Operations (Inherent Contradiction)*". The discussion of this item included a quote from Paragraph 57 of the Royal Commission on Security Report, and then stated:

When the Report of the Royal Commission was being discussed by the Cabinet Committee on Security and in Cabinet, the view was expressed that an inherent contradiction existed between the role of the R.C.M. Police as a law enforcement agency at the municipal, provincial and federal levels and its role in the field of security and intelligence. In its first capacity, the R.C.M. Police should and does strive towards ensuring that the conduct of its members is at all times lawful and above reproach. On the other hand, as the Royal Commission recognizes, security and intelligence work may require those engaged in it to undertake activities that are contrary to law and which would prove to be unacceptable and embarrassing to a properly administered police force whose duty it is to uphold and enforce the law.

While the recommendations of the Royal Commission respecting a separately organized civilian security service have not been accepted, it seems reasonably clear that this inherent contradiction has not been resolved and that an early solution must be found to it if our security and intelligence service is to be expected to provide not simply an interesting historical chronology of events but to inform Government in an effective way in advance of them.

41. Several witnesses who appeared before us were present at the meeting of the C.C.P.P. that was held on November 24, 1970, including Mr. McIlraith, Mr. Maxwell, Mr. Côté, and Mr. Starnes. Any questions put to those witnesses before this Commission as to what was said at that meeting on this subject were objected to by counsel for the government and certain of their clients on the ground that such discussions ought not to be revealed, even *in camera*, because of the importance of protecting the confidentiality of discussions in Cabinet or Cabinet Committee. When these objections were taken, we reserved our decision as to whether it was well-founded in the circumstances. Eventually, pursuant to the provisions of Order-in-Council P.C. 1979-887, dated March 22, 1979, we read the Minutes of that meeting, a draft of the Minutes, and handwritten notes of the meeting that were taken by a Cabinet secretary. We have not considered it necessary to decide upon the objection, for there was nothing in the documents which we read that indicated that those in attendance were informed of illegal activities by the R.C.M.P., and no one has suggested that at that meeting any such information was imparted. We did not consider that the issue raised by the objection was one which in the circumstance justified our giving consideration to a ruling that might result in Privy Councillors and others insisting, by resort to remedies that might be available to them, that the tradition of Cabinet confidentiality should be respected. However, we are satisfied, on the basis of our examination of relevant documents, that the two-page list of questions did accompany the Maxwell Memorandum at the meeting of November 24, 1970, and that it was drawn to the attention of those present as a helpful summary of the Maxwell Memorandum.

42. There is, accordingly, no evidence before us as to the substance of the discussions on this subject before the C.C.P.P. on that date. The Maxwell Memorandum was, however, considered as well at a meeting of the C.C.P.P. held on December 1, 1970, and evidence, which is discussed below, has been adduced before this Commission with respect to deliberations before the C.C.P.P. on that date.

(d) The December 1, 1970 meeting of the C.C.P.P.

43. As noted above, the Maxwell Memorandum was again before the C.C.P.P. at its meeting of December 1, 1970. Those present at this meeting included Prime Minister Trudeau, Mr. John Turner, then Minister of Justice, Mr. R. Gordon Robertson, then Clerk of the Privy Council, Mr. Donald Maxwell, then Deputy Attorney General and Deputy Minister of Justice, Mr. John Starnes, then Director General of the Security Service, Mr. D.H. Christie, then Assistant Deputy Attorney General and Assistant Commissioner R. Carrière. The Honourable George McIlraith, the then Solicitor General, was absent from this meeting by reason of impending eye surgery which took place on the next day.

44. Our inquiry into the December 1st meeting of the C.C.P.P. began when access was obtained by us to the minutes of the meeting and subsequently, in response to our request and upon the decision of Prime Minister Trudeau, we were given a copy of an extract of those minutes. We were also given a copy of

certain notes that had been made at the meeting by Mr. L.L. Trudel and Mr. M.E. Butler, then Assistant Secretaries to the Cabinet (these documents together form Exhibit VC-1). Mr. Trudel's notes are entitled "Police Operations page 5". The fourth page of those notes recorded the following discussion:

Starnes: misunderstanding of contradiction
— has been doing S & I illegal things for 20 years but never caught
— no way of escaping these things

Turner: If you are caught . . .
then what of police image
Should you not be disassociated

Starnes: Can be done within RCMP — Has been. What do we do in these circumstances, guidelines.

(Vol. C98, pp. 12964-65.)

45. The extract from the final typed minutes of that same meeting reads as follows:

On the question of the inherent contradiction in police operations, the PM said that certain activities in the Security and Intelligence Service might not result in prosecution for security reasons. The Cabinet Committee on security and intelligence was the more appropriate place to look at the whole question of the integration of information and intelligence, Dr. Isbister's Report on it, and the other questions on security and intelligence raised in the document. He added that: overview of the current FLQ situation and the status of security and intelligence could be examined, and a decision made on a briefing in Cabinet. He noted that the image of the RCM Police could be misrepresented if the security and intelligence forces were caught breaking the law in order to obtain information. This situation had existed for some time in the RCM Police and he asked that the whole question be referred to the Cabinet Committee on security and intelligence for consideration.

(i) The evidence of Mr. L.L. Trudel

46. Mr. Trudel testified (Vol. C96, pp. 12878-9) that the notes related to page five of the Maxwell Memorandum entitled "Police Operations — Inherent Contradiction" (Vol. C96, pp. 12879-80).

47. Mr. Trudel has no present recollection of the meeting, apart from his notes. However he testified that he recorded as best he could what in fact was said and did not paraphrase the statements made by the participants to the discussion (Vol. C96, pp. 12887-8).

(ii) The evidence of Prime Minister Trudeau

48. Prime Minister Trudeau also testified in respect to the meeting of December 1, 1970 and in particular with respect to the discussion recorded in the notes of Mr. Trudel. He testified that he did not have "a precise recollection of that being said, but I am perfectly happy to recognize that

words to that effect were said if it was written down here and I see in the minutes...". He was then asked whether, by reason of his memory or any document, he had reason to dispute or challenge the accuracy of Mr. Trudel's handwritten notes of the meeting of this subject and he answered:

Well, quite honestly, his notes don't mean anything to me. So, I wouldn't challenge, infirm or affirm the accuracy of them. But in the minutes, what you have just quoted as S & I doing illegal things for twenty years, I suppose he said that, and I honestly can't remember him saying that. You know, he was sitting there and he said that, but I don't want to make an issue of not remembering this kind of thing.

(Vol. C98, p. 12942.)

49. Mr. Trudeau testified he had no recollection of anyone at the meeting inquiring of Mr. Starnes as to the kind of illegal things that S & I had been doing for 20 years (Vol. C98, pp. 12942-4). Nor does he recall any discussion with Mr. Starnes, after the meeting, as to what he was talking about (Vol. C98, p. 12944).

50. The Prime Minister stated, however, that if Mr. Starnes had said "these guys have been breaking the law and committing crimes for twenty years, I think there would have been a hell of a lot of questions asked: 'What do you mean?' And you know, 'how do they get away with it?' and so on" (Vol. C98, p. 12944).

51. In his evidence, Mr. Trudeau did not deny that Mr. Starnes said at the meeting that S & I had been doing illegal things for 20 years and were never caught (Vol. C98, p. 12950). However, reasoning *ex post facto*, Mr. Trudeau expressed the thought that "maybe he didn't even use the word illegalities, and maybe it is shorthand by Mr. Trudel for what Mackenzie calls against the spirit if not the letter of the law" (Vol. C98, p. 12946).

52. However, Mr. Trudel, as noted above, testified that he did not paraphrase the statements made by the participants to the meeting but, rather, he recorded as best he could what in fact was said (Vol. C96, p. 12894).

53. Mr. Trudeau further stated that whatever Mr. Starnes did say at the meeting it:

... certainly didn't convey to me at the time or in my memory of it today the assertion that the police were out committing crimes.

(Vol. C98, p. 12951.)

54. The Prime Minister further testified that if Mr. Starnes had referred at the meeting to "stretching the spirit of the law because we are putting in listening devices" that statement would have had a different meaning than if someone at the meeting had said "Well, we just have to blow up a bridge so as to get one of our guys accredited to one of the F.L.Q. cells" and Mr. Starnes had said "Yes, and we have been doing that kind of thing for twenty years" (Vol. C98, p. 12951). Mr. Trudeau stated that if the word "illegality" was used, in the atmosphere of the discussion, that word did not strike him as being "the commission of crimes". Otherwise, he believes, there would have been a different reaction and different minutes of the discussion (Vol. C98, p. 12952).

55. Moreover, Mr. Trudeau reasoned, if Mr. Starnes had meant to convey the commission of crimes as compared with things in the nature of those that he referred to in his testimony, he would not have "blurted it out in front of seventeen people". The things Mr. Starnes had referred to, as summarized in a question to Mr. Trudeau, were

documents to establish false identities; someone being put at risk — on an operation of being put at risk to engage in something unlawful; entering without consent to install surveillance devices; entering to examine the trade of illegal agents documents ... that sort of thing; false registration in a hotel; false documentation for watcher service vehicles.

(Vol. C98, p. 12947.)

56. Mr. Trudeau stated "without any hesitation" that the minutes "never came into my possession" because he had issued an order that Ministers should not get copies of Cabinet minutes unless they requested them. He testified "without any hesitation that barring the first few months of my ... job as Minister of Justice, I don't think I ever read these minutes ..." (Vol. C98, pp. 12953-4). To Mr. Trudeau, "the relevant part of the minutes was the record of that decision, and that record of decision was circulated", and Ministers frequently would make representations that they disagreed with the record of decision (Vol. C98, p. 12955).

57. Mr. Trudeau questioned in his evidence the accuracy of the minutes on this subject. He stated that when he compared the minutes with the notes (Mr. Trudel's notes), in his view it is clear from the notes that it was not the Prime Minister but someone else who uttered the words which in the Minutes are attributed to the Prime Minister:

On the question of inherent contradiction in police operations, the Prime Minister said that certain activities of the Security Service might not result in prosecution for security reasons.

58. Mr. Trudeau however, earlier in his testimony had stated that he would not challenge, "infirm" or affirm the accuracy of Mr. Trudel's handwritten notes (Vol. C98, p. 12942). Further, he recognized that the minutes of the above-quoted passage are capable of being read as indicating that he was aware at the meeting that there were illegal activities being engaged in by the Security Service but that there would not be prosecutions because, for example, a prosecution would "spill the beans, as it were" (Vol. C98, p. 12958). In other words, according to Mr. Trudeau,

if that one reading were held, I might find it a bit embarrassing, as meaning: you know, we shouldn't prosecute the police when they break the law because we might want to keep a veil of secrecy on it.

(Vol. C98, p. 12959.)

However, Mr. Trudeau asserted that Mr. Trudel's longhand notes justify a completely different interpretation of what was said. Those notes read, in this connection:

Maxwell: legal pt. of view is not assessing intelligence

PM: Why legal, if for security reasons we decide not to prosecute.

From these notes, Mr. Trudeau concluded that what was being discussed at that point was not illegal activities by the police, or the "non-prosecution of S & I people who might have skirted the law" (Vol. C98, p. 12961) but "quite clearly" (Vol. C98, p. 12961) illegal activities by a suspect (e.g. a suspected terrorist), and a decision not to prosecute the suspect because to do so would reveal Security matters, such as the identity of sources. Mr. Trudeau's own words in this regard are as follows:

... they might find that a suspect has broken the law, but we are not going to put him to the courts because in order to prove that he broke the law, or committed espionage or whatever it is, we will have to unveil all our security batteries and reveal our sources and everything else. And therefore, Maxwell says: we look at the policeman's point of view. It is not the same point of view of S & I people who are gathering intelligence, assessing intelligence. And I sort of say the same thing: if there is a suspected spy ...

Q. Is that somewhere in Trudel's notes ...

THE CHAIRMAN:

Just a minute, Mr. Kelly?

THE WITNESS:

A. Yes. If there is a suspected spy, why invoke the force of the law against him if it is essential to your security operations that you don't want to put him in jail, you want to use him to catch other spies. And I think that's what both Maxwell and I are saying.

MR. W.A. KELLY:

Q. Did you say: Maxwell? or Trudel?

A. Maxwell and I.

Q. In Trudel's notes?

A. In Trudel's notes. And therefore, the minutes, the final minutes, "might not result in prosecution for security reasons" can mean something different than what we presumably are both saying.

Q. So, what you are saying is that the reference to activities and not prosecution is the reference to activities of terrorists and not the activities of members of the Security Service?

A. Exactly.

(Vol. C98, pp. 12959-60.)

And later, on the same point, Mr. Trudeau said:

Maxwell is really saying: look, there is the policeman's point of view, and then there is the intelligence gathering assessment point of view. One is the legal point of view, and the other is the Security and Intelligence point of view. And I am saying that it may well happen that the legal point of view which could lead you to put a target before the courts as having broken the law of espionage might be rejected for security reasons when you decide not to put him before the courts because you might have caught a lesser spy, you might go for the bigger fish.

Q. Is that your recollection of what was said? Or are you interpreting Mr. Trudel's notes at page 3?

A. Yes, mainly the latter. I don't recollect that discussion at all.

(Vol. C98, p. 12962.)

59. It is clear, on the basis of Mr. Trudeau's evidence, that these comments were the result of a construction placed by him on Mr. Trudel's notes without the benefit of any express recollection of what in fact was discussed at the meeting.

60. Mr. Trudeau's examination of the minutes turned then to the last two sentences, which read as follows:

He noted that the image of the RCM Police could be misrepresented if the security and intelligence forces were caught breaking the law in order to obtain information. This situation had existed for some time in the RCM Police and he asked that the whole question be referred to the Cabinet Committee on Security and Intelligence for consideration.

He noted that an examination of Mr. Trudel's notes would support the inference that in drafting those two sentences and attributing what was said to Mr. Trudeau, Mr. Trudel appears to have run several passages together and attributed to Mr. Trudeau observations which were, in fact, made by other persons (Vol. C98, p. 12967). The portion of Mr. Trudel's notes to which Mr. Trudeau referred reads as follows:

Starnes: misunderstanding of contradiction
— has been doing S & I illegal things for 20 years but never caught
— no way of escaping these things

Turner: If you are caught...
then what of police image
Should you not be dissociated

Starnes: Can be done with RCMP — Has been. What do we do in these circumstances, guidelines.

(Vol. C98, pp. 12964-65.)

61. Mr. Trudeau dealt further with the following sentence in the minutes: "He noted that the image of the RCM Police could be misrepresented if the security and intelligence forces were caught breaking the law in order to obtain information". Mr. Trudeau suggested in evidence that the key to the meaning of whatever was in fact said lies in the words "in order to obtain information". These words, he suggests, make it clear that what was being discussed was not "breaking the law in order to penetrate a cell or to be recognized" (which would imply commission of a crime) but "breaking the law in order to obtain information, whether it be by bugs, or by petty trespass or by writing a false name in a hotel register" (Vol. C98, p. 12968).

62. However, we note that, whether the law is broken to penetrate a terrorist or violence-prone group or to install eavesdropping devices, or to gain entry to a hotel under a false name or otherwise, the purpose in each case for the breaking of the law is to gather information or intelligence considered by the Security Service to be of value. In each case there is a breach of some legal rule (including perhaps a criminal offence) to further the activities of the Security Service.

63. In addition to his evidence regarding specifically Mr. Trudel's handwritten notes of the December 1, 1970 C.C.P.P. meeting, Mr. Trudeau gave evidence with respect to the consideration given by the C.C.P.P. to the Maxwell Memorandum at its December 1st meeting. In this regard, Mr. Trudeau testified that he could not actually recall reading the Maxwell Memorandum (Vol. C98, p. 12922). Similarly he stated that he had no present recollection of having seen the two-page document entitled "Various Questions for Decision Raised by Law and Order Paper", including the seventh question contained therein and which, as referred to above, dealt with the elimination of this "inherent contradiction" (Vol. C98, p. 12930).

64. Mr. Trudeau stated that normally his staff briefed him on such documents and would draw his attention to particular parts of it. In this case Mr. Trudeau stated that a briefing note was prepared for the C.C.P.P. meetings of November 24 and December 1, 1970 respectively (Vol. C98, p. 12924). The briefing note did not, however, refer to "illegal activities" (Vol. C98, pp. 12927-9).

65. Mr. Trudeau's attention was drawn to that part of the Maxwell Memorandum in which paragraph 42 of the Report of the Royal Commission on Security was referred to. That paragraph, as quoted by Mr. Maxwell in a section of his paper entitled "Police Operations (Inherent Contradiction)" (Ex. M-36), read as follows:

Finally, although we have been unable to reach any firm conclusion about the effectiveness of many of the operations currently being undertaken by the RCMP, we are left with a clear impression that there has been some reluctance on their part to take the initiative or even to cooperate in certain forms of more aggressive penetration operations; government policy has been especially inhibiting in this area, but we are not sure that the RCMP has made a sufficient — or a sufficiently sophisticated — effort to acquaint the government with the dangers of inaction.

The Report of the Commission went on to say:

Furthermore, there is a clear distinction between the operational work of a security service and that of a police force. A security service will inevitably be involved in actions that may contravene the spirit if not the letter of the law, and with clandestine and other activities which may sometimes seem to infringe on individuals' rights; these are not appropriate police functions. Neither is it appropriate for a police force to be concerned with events or actions that are not crimes or suspected crimes, while a security service is often involved with such matters. Generally, in a period in which police forces are subject to some hostility, it would appear unwise either to add to the police burden by an association with security duties, or to make security duties more difficult by an association with the police function.

Mr. Maxwell's Memorandum then referred to a discussion in Cabinet that had occurred when the Report was considered, and said that the view had been

expressed that an inherent contradiction existed between the role of the R.C.M. Police as a law enforcement agency at the municipal, provincial and federal levels and its role in the field of security and intelligence. In its first capacity, the R.C.M. Police should and does strive towards ensuring

that the conduct of its members is at all times lawful and above reproach. On the other hand, as the Royal Commission recognized, security and intelligence work may require those engaged in it to undertake activities that are contrary to law and which would prove to be unacceptable and embarrassing to a properly administered police force whose duty it is to uphold and enforce the law.

While the recommendations of the Royal Commission respecting a separately organized civilian security service had not been accepted, it seems reasonably clear that this inherent contradiction has not been resolved and that an early solution must be found to it if our security and intelligence service is to be expected to provide not simply an interesting historical chronology of events but to inform government in an effective way in advance of them.

Mr. Trudeau stated that he understood the "inherent contradiction" to be that ... when you have a police force like the R.C.M.P. which is entrusted with the enforcement of the law and is highly respected as a law enforcement ...

Q. On the CIB side?

A. On the CIB side, and you have, on the S & I, Security and Intelligence side, the same force doing things which, in Mackenzie's words, are against the spirit if not the letter of the law, then you have this inherent contradiction of a police force that you must respect because it is enforcing the law; and on the other hand, the same people skirting the law — not necessarily breaking it, but stretching, shall we say, its spirit. And that is the contradiction, if my recollection is correct, that Mackenzie pointed out, and which Maxwell refers to here.

(Vol. C98, p. 12934.)

66. When this passage from the Maxwell Memorandum was discussed, Mr. Trudeau was present at the meeting (Vol. C98, p. 12938). He stated, when questioned as to the specific date that the C.C.P.P. considered the "inherent contradiction" faced by the Security Service, that he remembers this subject having been discussed around "that time" [December 1st, 1970]. Generally, however, he would not

... honestly say in my memory I am able to draw out ... either the substance or the particular fact that the discussion took place on that date.

(Vol. C98, p. 12939.)

67. In addition to the evidence of Mr. Trudel and Mr. Trudeau with respect to the December 1, 1970 meeting of the C.C.P.P. and Mr. Trudel's handwritten notes thereon, we heard oral evidence on this issue from several other persons who attended the meeting.

(iii) The evidence of Mr. John Starnes

68. As with Mr. Trudeau, Mr. Starnes testified that he cannot remember "what precisely was said" at the December 1st meeting, with the result that his evidence as well on this issue is a reconstruction based on Mr. Trudel's handwritten notes (Vol. C96, pp. 12840, 12844 and 12856).

69. He interprets the words "no way of escaping these things", which are attributed to him in the notes, as an attempt to capture what he was trying to say, which

is the thought that in my view a number of these things were being done by the Security Service, which might be illegal, could not be avoided, if they were to do their job properly and to do the things the Government wanted them to do.

(Vol. C96, p. 12841.)

70. He told us that he does not recall having mentioned at the meeting any specific occasion on which an illegal "thing" was done.

71. Mr. Starnes was asked what he would have told the Cabinet if someone at the meeting had asked what illegal activities he was referring to. In reply (at Vol. C96, p. 12848) he referred to a list of problems he had mentioned in earlier testimony (Vol. C30, p. 3622). The problems, as they had been identified in his earlier testimony, were as follows:

- the creation of false identity documents, to provide cover for an undercover agent;
- the fact that an undercover agent might be put in the position of having to break some law in order to establish his bona fides with an organization;
- the fact that, in installing electronic devices, members of the Security Service would have to enter private premises without the consent of the owner or tenant in order to look about and install the devices;
- the conducting of intelligence probes, namely, entries into private premises without the consent of the owner and without a warrant, to examine documentation or physical things, and photograph or copy them;
- registration in a hotel under a false name;
- defectors might bring documents with them, belonging to another person;
- false documentation for the purpose of establishing a legend;
- disguising the ownership of safe houses; and
- false documentation for vehicles.

However, Mr. Starnes testified that after almost ten years

It is straining my memory now to suggest, you know, to you precisely what those things might have been.

(Vol. C96, p. 12848.)

He also said that the items listed were

things which I might have known about but which I do not remember as having known as of the 1st of December or November or whenever it was, 1970.

(Vol. C96, p. 12849.)

72. Mr. Starnes stated further that he does not know whether at that time he knew of intelligence probes, namely, entries without consent or warrant for the purpose of removing things or documents from premises or to examine the premises or things on the premises. He repeated his earlier testimony that he was not aware of the opening of mail. As we note in Part III, Chapter 5, Mr.

Starnes said that he has no recollection that there were arrangements whereby members of the Security Service could obtain information from the Department of National Revenue records. He subsequently modified that position by saying that his knowledge depended on the point in time being referred to. Still later he told us that he "must have been" aware of such access, although he could not recall his earlier testimony on the subject (Vol. 149, pp. 22826, 22835, 22871; Vol. C96, p. 12849).

73. Mr. Starnes testified that his "impression" was (in December 1970) that "they already knew" that S & I had been doing illegal things for 20 years (Vol. C96, p. 12863). In this regard the following exchange took place during his testimony:

Q. But, you say apart from this reinforcement [the notes of the meeting by M. Trudel] you did in fact, you are swearing today, on December 1st, 1970, you had the impression at that meeting that they, that is to say, Mr. Turner and Mr. Trudeau, already knew that S & I had been doing illegal things for twenty years?

A. Well, maybe I'm wrong . . . I don't know. You know, I simply cannot recall precisely and exactly what took place.

(Vol. C96, p. 12868.)

And further:

Q. Again I ask you whether, when you say that your impression is reinforced, does that mean that you are saying today that you now can remember that on December 1st, 1970, you had formed a certain impression?

A. No, I cannot say that truthfully.

(Vol. C96, p. 12869.)

74. Mr. Starnes relied on testimony he had given earlier, which he said was "the way I can best describe it" (Vol. C96, p. 12866):

I find it very difficult to accept the thesis that Ministers were not aware in general terms of the problems of the Security Service in carrying out their activities of this kind...

(Vol. 106, p. 16583.)

Mr. Starnes testified that after November 27 and December 1, 1970, he was never told by anyone in government that any illegal activities should be halted. Asked whether he was speaking from memory, he answered:

I certainly would remember that, because that would be an order and I would have acted on it.

He also testified that after those two dates he did not ever receive any inquiry from any government official or Minister as to what he had meant by reporting that the R.C.M.P. had been "committing criminal acts" or "doing illegal things". Asked whether he was speaking from memory, he answered:

I would have remembered. That is surely, would have been something. You know, Mr. Chairman, I suspect that after the meeting of — I have forgotten the date now — December the 19th, I guess it was, 1970, when we were supposed to discuss these matters, and the Prime Minister put it off and we never did...I can remember no discussion thereafter of the

subject, and I think it probably led to the disillusionment which, eventually, caused me to take my early retirement and I can say now, had I been fifty-five then, I probably would have retired earlier.

(Vol. C129A, pp. 17281-2.)

75. Mr. Starnes testified that after November 27 and December 1, 1970, he does not remember having gone to any government official or Minister to volunteer the details of what he had meant by the words "committing criminal acts" or "doing illegal things" and to ask for guidance in regard to such activities. He says that he is "quite sure" that "there were other occasions" when he raised the matter — i.e. "when the problems associated with this kind of thing and the need for guidance would have been raised with Ministers" — but he "cannot remember them" and "cannot be specific" (Vol. C129A, pp. 17282-5). Again, he says that "Ministers were aware or had been made aware, that we had been breaking the law" (Vol. C129A, p. 17274). He added:

The closest one I might have come to it, was by the time I had decided to leave, and engineered a meeting with the Prime Minister, to try to make my successor's lot a little easier. . . You see, interlinked with all this, intertwined with all this, is the equally frustrating and difficult problems associated with not being able to do what it was the Government wanted done, in terms of making a Security Service more civilian and all the rest of it. . . The difficulties between the RCMP, as such, and the Security Service, and the whole future and more than that, all the problems that lay on the plate of the Security Service at that time, and, you know, particularly in the field of espionage, I just did not think it was wise to rock the boat and have a big row again over nothing. . . Well, not over nothing, but I guess I had run out of steam by that time.

(Vol. C129A, pp. 17286-7.)

(iv) The evidence of Mr. R.G. Robertson

76. Mr. R. Gordon Robertson was Clerk of the Privy Council and Secretary to the Cabinet in 1970. He normally attended meetings of the C.C.P.P. He has no specific recollection of the meeting of that Committee held on December 1, 1970, or of the discussion of the question of "Police Operations (Inherent Contradiction)" (Vol. C108, pp. 13892, 13903). His review of the minutes of the meeting and Mr. Trudel's handwritten notes did not assist him in this regard (Vol. C108, p. 13894).

77. Mr. Robertson stated that he has no specific recollection of having seen the documents that related to the December 1st meeting, but believes that he would have seen them. It was his practice to read such documents in advance of the scheduled meeting (Vol. C108, p. 13896).

78. While he does not specifically remember the discussion, he does remember that at about that time he thought that the Maxwell Memorandum reflected a misunderstanding by the author of the observations of the Royal Commission (Vol. C108, p. 13908). In Mr. Robertson's view the important distinction drawn by the Royal Commission was between a police force that is not appropriately concerned with non-criminal activity, and a Security Service which "is often involved" in such matters. He felt that the other distinction,

concerning "the spirit if not the letter of the law", was not very important, "pretty nearly a non-issue", because, so far as he knew at the time, the Security Service did nothing in its operational methods that the C.I.B. did not do (Vol. C108, pp. 13909-10). The only problem that the Security Service had in its operations, which was drawn to his attention and which was different from the problems on the C.I.B. side, was the problem of penetration of the F.L.Q. namely, that when the F.L.Q. realized that members of the R.C.M.P. were not authorized to commit crimes, penetration could effectively be prevented by requiring people joining a cell to commit a crime as a requirement of admission. (The problems associated with such penetration efforts were raised in a paper prepared by the R.C.M.P. in the second stream of Law and Order Documents discussed below.)

79. Although Mr. Robertson does not recall any part of what was discussed at the meeting of December 1, 1970, he testified that he could, with the aid of documents he read in preparation for testifying, "reconstruct to a degree the kind of discussion" which took place, having the result that he thought he remembered "some of the comments" (Vol. C108, p. 13915). Mr. Robertson stated that he remembers that at one of the meetings of the C.C.S.I. he discussed the Committee structure as it then existed; the notes by Mr. Trudel enabled him, as a matter of reconstruction, to say that "it looks as though I said something about this on December 1st" (Vol. C108, p. 13917). However, apart from his remembering that the Prime Minister talked about the Deuxième Bureau in France — which the notes indicate — Mr. Robertson stated that he does not recall and cannot reconstruct from the notes any of the specific comments made by persons other than himself (Vol. C108, p. 13918).

80. Mr. Robertson testified that he does not doubt that Mr. Starnes must have said something like "the S & I has been doing illegal things for twenty years but never caught", or such words would not, in his view, appear in the notes. Mr. Robertson infers, from the fact that the notes do not record that anyone at the meeting asked Mr. Starnes what he meant by that statement, that what everyone around the table must have thought Mr. Starnes was talking about was

the kind of thing that I think all of us who were connected with police work or security work thought had to be done by police forces, not just the R.C.M.P., but by police forces in general, and not just the Security Service, but the police forces, which involved minor misdemeanours where things like traffic violations, false registrations in hotels, completing ownership certificates for cars falsely, surreptitious entry, other things of that kind took place; and this was thought to be a perfectly normal and necessary part of police work.

(Vol. C108, pp. 13920-1.)

81. Mr. Robertson stated that at the time of the December 1st meeting, he assumed that all police forces committed traffic violations; he knew that police registered in hotels under assumed names in order to eavesdrop electronically on the adjoining room, and he thinks he probably knew that there was a statute requiring registration in the guest's own name; he knew that all police forces completed false applications for vehicle registration certificates; and he knew

that evidence had been introduced in courts that had been obtained as a result of a surreptitious entry (Vol. C108, pp. 13992-6).

82. Mr. Robertson testified that the two-page list of questions before the C.C.P.P. meeting of December 1, 1970 and referred to above, was prepared in the Department of Justice (Vol. C108, p. 13897). He stated that the seventh question therein, namely "the question of the commission of crime in the national interest" was not, as such, raised at the December 1st meeting "... because nobody thought there was any crime being committed by the Security Service" and further, "... there is nothing in the Mackenzie Report that refers to crime" (Vol. C108, p. 13927).

83. In Mr. Robertson's view, the reference in the Report of the Royal Commission on Security to "actions that may contravene the spirit if not the letter of the law" referred to "minor peccadilloes" (Vol. C108, p. 13931). The Commissioners did not say in their Report that crimes were being committed, and, Mr. Robertson testified, they did not say it to him, or to his knowledge, to the Prime Minister (Vol. C108, p. 13932). Mr. Robertson pointed out that no reader of the Report, in Parliament or in the press, had ever asked whether those words meant that the R.C.M.P. were committing crimes (Vol. C108, p. 13934). He thought that, if the Commissioners had meant to say that the S & I Branch was doing something unlawful, they would have communicated the details to the government (Vol. C108, p. 13991).

84. Mr. Robertson confirmed what Mr. Trudel had stated in evidence that at a meeting of the Cabinet Committee it was the "normal practice" of Prime Minister Trudeau, before reaching a conclusion, to summarize the discussion and to try to bring out what he thought had been points of agreement and what had been particularly difficult issues raised (Vol. C108, pp. 13943-9).

85. Mr. Robertson, like Mr. Trudeau, considers that the words found in Mr. Trudel's notes, that certain activities of the Security and Intelligence Service might not result in prosecution for security reasons, did not refer to non-prosecution of members of the R.C.M.P. but rather to non-prosecution of persons under investigation (Vol. C108, pp. 13953-4).

86. Finally, Mr. Robertson testified as to the procedure by which minutes of such meetings were prepared, and stated that it was "most unlikely" that a draft of the minutes was submitted to him (Vol. C108, p. 13981).

(v) The evidence of Mr. P.M. Pitfield

87. Mr. P. Michael Pitfield was Deputy Secretary, Plans, in the Cabinet Office in December 1970. In this capacity he attended meetings of the C.C.P.P. and was present at the December 1st meeting of that Committee (Vol. C117A, pp. 15290-91). Mr. Pitfield testified that his function at this meeting was to serve as a "general sort of ringmaster within the meeting", arranging for the admission of people to the meeting and for subsequent or previous items on the agenda, taking telephone calls, etc. He was not, however, directly concerned with items that were under discussion at the meeting nor was he present consistently throughout the meeting (Vol. C117A, pp. 15291-92).

88. Mr. Pitfield testified that he had no recollection of the December 1, 1970 meeting and that a reading of the minutes of the meeting or of Mr. Trudel's handwritten notes did not help him to remember (Vol. C117A, pp. 15293 and 15299). Mr. Pitfield stated that Mr. Trudel reported, in December 1970, to the Assistant Secretary of the Cabinet who was responsible for the C.C.P.P. (Mr. Butler) who in turn reported to Mr. Pitfield. Mr. Pitfield himself was not involved in the preparation of minutes of meetings of the C.C.P.P. but was involved in preparing the record of decision of such meetings, that is, the circulation of the last paragraph of the minutes (Vol. C117A, pp. 15295-96).

89. Mr. Pitfield testified that the words attributed by Mr. Trudel, in his handwritten notes, to Mr. Starnes, did not assist him in recalling any discussion which he may have heard at the December 1st meeting. In addition, Mr. Pitfield stated:

The minutes do not stimulate any memory that I may have or should have of this; and indeed, I quite frankly do not understand the minute very well either.

(Vol. C117A, pp. 15300-01.)

and further:

...I think it is, from my point of view, this is a very embarrassing and unprofessional minutes [sic] and it is difficult to trace the association between the notes and the minute. The minute is a hodge-podge of what a number of people said, attributed to one person, and that is, when you play the notes and the minute one against the other, that is what appears to be the case. The notes themselves are a sort of collection of snapshots. One has the impression that the note taker is trying to keep up with a discussion as it goes along and he is just taking enough of the words that are said, that he will be able, when he gets back to the office, to jog his memory, so that he can put it all together, in some sort of replay. I suspect that when he got back and tried to put it all together, he found it didn't fit, so he had to push it a little bit, in order to get the reconstruction he has come up with here.

(Vol. C117A, pp. 15301-02.)

90. In Mr. Pitfield's view the notetaker, Mr. Trudel, was "trying to summarize" and "not only is he trying to summarize but he is trying to summarize a series of snapshots and he has to bend a little in order to do it, ... it is a lousy set of minutes and it is not one we would be very proud of" (Vol. C117A, p. 15307).

91. With respect to the Maxwell Memorandum, and the two-page list of questions which accompanied it, Mr. Pitfield stated that the list of questions "came in very late, and it would not have been circulated in time for Ministers to have had an adequate opportunity to read and digest it" (Vol. C117A, pp. 15294-95). (In fact, as we have stated, we are satisfied that the two-page list of questions was attached to the Maxwell Memorandum a week earlier, at the meeting of November 24.) Neither the list nor the Memorandum assisted Mr. Pitfield, however, in recalling the discussions at the December 1st meeting (Vol. C117A, p. 15295).

(vi) The evidence of the Honourable J.N. Turner

92. The Honourable John Turner was Minister of Justice and Attorney General of Canada from July 6, 1968 to January 1972. Mr. Turner was a member of the C.C.P.P. during 1970 and attended the meeting of that Committee on December 1, 1970 (Vol. C118, pp. 15326 and 15328). He confirmed that the minutes of the meeting indicated that he presented the Maxwell Memorandum to the meeting (Vol. C118, p. 15328). Although he has no present recollection of the document, Mr. Turner did confirm that the two-page list of questions (Ex. M-36, Tab 7; MC-6, Tab 3) in fact accompanied the Maxwell Memorandum when it was introduced by him at the meeting (Vol. C118, pp. 15331-32).

93. Mr. Turner stated that he was unable to reconstruct the discussion that occurred at the meeting and accordingly could not recall whether the questions contained in that list and, in particular, question number seven were discussed (Vol. C118, p. 15333). He testified that the minutes of the meeting did not refresh his memory, nor did the handwritten notes of Mr. Trudel (Vol. C118, pp. 15337 and 15338). Asked "do you have any indication or any recollection . . . that the notes would be incorrect?" Mr. Turner replied "No, I couldn't say one way or the other" (Vol. C118, pp. 15338 and 15339, 15340-41).

94. When asked what he would have done had he been told that the Security and Intelligence Branch of the R.C.M.P. had been doing illegal things for some 20 years he replied "I would have considered it my duty to investigate" (Vol. C118, p. 15342).

(vii) The evidence of former Commissioner W.L. Higgitt

95. Former Commissioner Higgitt attended meetings of the C.C.P.P. and other Cabinet Committees frequently during his tenure as Commissioner of the R.C.M.P. (Vol. C117A, p. 15248). With respect to the Maxwell Memorandum, Mr. Higgitt testified, when asked whether he recalled a discussion at Cabinet level of the problems expressed in that memorandum, that

...I am aware that these things were discussed, these topics were discussed. I have a memory of — I can't put a date to it — I have a memory of Mr. Maxwell himself being at a meeting of Cabinet Ministers, at which I was present. The date, I cannot identify — at which matters of this nature were discussed.

I think, without violating the truth at all, I could say that this document was discussed, but again, it is ten years ago.

(Vol. C117A, p. 15251).

and further:

...I really can't, in honesty, say what the actual discussions were, but certainly these kinds of things were laid before the Ministers that were present.

(Vol. C117A, p. 15252.)

96. With respect to question number seven of the two-page list, Mr. Higgitt testified:

The inherent contradiction question certainly was one of the questions that was discussed and had been discussed on one or two or more occasions in

different forums. There is no question in my mind about that. I remember that.

and further:

... it was the kind of question — it was one of the questions that certainly was discussed. I would be pushing my memory too far to say precisely where, but certainly with Cabinet Ministers.

(Vol. C117A, pp. 15254-55.)

Mr. Higgitt stated in evidence that he was not surprised to see in Mr. Trudel's notes the statements attributed to Mr. Starnes and Mr. Turner "because they are indeed, the things that were discussed" (Vol. C117A, pp. 15271 and 15273). Mr. Higgitt did not, however, recall the actual discussions at the December 1, 1970 C.C.P.P. meeting. His direct evidence in this regard was as follows:

Q. Did you ever hear Mr. Starnes express the view that 'has been doing, S & I illegal things for twenty years but never caught'. Do you recall Mr. Starnes ever expressing that to you or in front of you?

A. Yes. Mr. Starnes and I have discussed that on a number of occasions.

Q. That Security & Intelligence were doing illegal things or had been doing illegal things for twenty years?

A. Yes. Those were the kind of discussions that we had on a number of occasions.

THE CHAIRMAN:

Q. Through the year 1970?

A. Yes.

Q. During the first year of his term as Director General?

A. Yes. I am quite sure that is true, sir.

MR. GOODWIN:

Q. Did you ever hear him express them to Cabinet Ministers?

A. Here I have to say I really can't remember that.

Q. Did you ever express that to Cabinet Ministers?

A. Yes. I don't know that I would have used those precise words, but yes, that thought was expressed by me.

Q. That illegal things had been going on for twenty years?

A. Whether I put twenty years on it or not is another question, but certainly there was no secret about that, or illegal type of things, so-called. I must underline those so-called illegal things were being done.

Q. Would you explain to us what you mean by this expression so-called?

A. Well, for example, I would use an example as a surreptitious entry into a premises, and perhaps it is a matter of opinion where the legality or illegality comes in . . . but that type of thing.

(Vol. C117A, pp. 15275-77.)

97. According to Mr. Higgitt, the minutes of the December 1, 1970 meeting supported "the certain knowledge [he had], that this sort of thing occurred in

these meetings" (Vol. C117A, p. 15279). He could not, however, "put a date" to the discussions by Ministers which he stated to have occurred on this matter (Vol. C117A, pp. 15280-81).

(viii) The evidence of former Deputy Commissioner R. Carrière

98. Mr. Carrière testified before the Commission that in his entire career with the R.C.M.P. he had attended only one meeting of the C.C.P.P. and that meeting was chaired by Prime Minister Trudeau (Vol. C117A, pp. 15225-26). Mr. Carrière stated that, while he had no clear recollection as to who was present at this meeting, Commissioner Higgitt, Mr. Starnes and Cabinet Ministers "must have been there". The meeting recalled by Mr. Carrière "wasn't too long before Mr. Cross was found. It could be days, it could be a week or two weeks, but not much more than that" (Vol. C117A, p. 15229).

99. Mr. Carrière recalled this meeting not only because it was chaired by Mr. Trudeau but, as well, because there was a non-Cabinet Minister present at the meeting who was critical of the intelligence results being obtained by the police with respect to the Cross kidnapping case. This criticism prompted Mr. Carrière to seek permission from Mr. Trudeau to respond to it, which he then in fact did (Vol. C117A, pp. 15229-30; 15232-33). Mr. Carrière did not, however, have any recollection of the discussion recorded by Mr. Trudel in his notes as having taken place at the C.C.P.P. meeting he attended. Neither the minutes of the meeting nor the Maxwell Memorandum assisted him in this regard.

(ix) The evidence of Mr. D.H. Christie

100. Mr. Christie was the Assistant Deputy Attorney General in 1970 and in that capacity was in charge of all matters relating to criminal law and to legislative matters (Vol. C118, p. 15371). Mr. Christie testified that he was the author of the first draft of the Maxwell Memorandum and that after he discussed it with Mr. Maxwell certain changes and corrections were made in the document (Vol. C118, p. 15373). He has no recollection of discussing the document with Mr. Turner prior to the meeting of the C.C.P.P. on December 1, 1970 (Vol. C118, pp. 15373-74).

101. He attended that meeting although, he testified, it was unusual for him to attend such a meeting (Vol. C118, p. 15376). Mr. Christie has no recollection of having seen the two-page list of questions prior to his preparation for his testimony (Vol. C118, pp. 15379-80). He stated that he had recently had an opportunity to review the documents that make up Exhibit VC-1, that is the handwritten notes of Messrs. L.L. Trudel and M.E. Butler and the extract from the minutes of the meeting, that these documents did not refresh his recollection, and that he had no independent recollection of the meeting (Vol. C118, pp. 15380-82). When asked whether he questioned the content of Mr. Trudel's notes he replied: "No, I can neither affirm or deny the validity of these notes" (Vol. C118, p. 15390).

102. He was asked whether he had the impression in 1970 that the operations carried out by the Security Service were not in accordance with the highest standards of conduct and he replied:

There was an impression abroad that the second quotation from the Mackenzie Report, which appears in the documents, reflected what was, I think, understood to be pretty common knowledge among those who were involved at all in this area.

(Vol. C118, p. 15378.)

Later in his evidence he was asked whether he had any discussions with Mr. Maxwell concerning the commission of crimes by members of the Security Service and he responded:

No, not specific crimes. Nothing beyond, sort of, general belief, as reflected in the Mackenzie-Coldwell Report. But we never discussed particular types of crimes that they may or may not have been committing.

(Vol. C118, p. 15387.)

In this regard he was referring to that portion of the Mackenzie Report which stated that

A security service will inevitably be involved in actions that may contravene the spirit if not the letter of the law and with clandestine and other activities which may sometimes seem to infringe on individuals' rights. These are not appropriate police functions.

He further testified he had not addressed his mind to whether this statement included conduct on the part of the Security and Intelligence Branch that was illegal. He agreed that the actions referred to in the Mackenzie Report, that gave rise to the impression he had described, would "not necessarily" involve illegality (Vol. C118, pp. 15394 to 15396).

(x) The evidence of Mr. M.E. Butler

103. In late 1970 Mr. Michael Butler had been an Assistant Secretary in the Privy Council Office for a year and a half. He was specifically responsible for the work of the Cabinet Committee on Priorities and Planning. His functions included "being the active practical secretary at meetings". He says that he was at the December 1 meeting as its "working secretary", which means that he was the "active secretary, facilitating the meeting" but that at the same time he "was taking notes" so that if Mr. Trudel, whose "job was to take and prepare minutes", could not do so, he could prepare minutes himself (Vol. C119, pp. 15403-4). He told us that, even before he was, in February 1981, shown documents relating to the December 1 meeting he "had some memory of what took place at the meeting" (Vol. C119, p. 15401). What he has independent recollection of is that

at one stage in the meeting, Mr. Robertson and the Prime Minister together decided to refer a lot of the material that was being discussed to another committee, a Security Committee...

(Vol. C119, p. 15402.)

And later he testified:

... I recall that the meeting had largely ground to a halt while the Prime Minister and Mr. Robertson were sorting out where to take it from here.

And I remember watching them very carefully, because it was a critical turning point in the meeting. And I recall all of this without having the documents — without having seen the documents to refresh my memory — which resulted in a lot of material being referred to the Cabinet Committee on Security; and the decision subsequently being taken to get on with some of the basic homework on that Law and Order.

(Vol. C119, pp. 15425-6.)

Mr. Butler says that he “kept notes in a ring-binder and on the document that was being discussed at the time.”

104. Mr. Butler says that if Mr. Starnes had uttered the words attributed to him by Mr. Trudel,

I think the alleged statement is of such consequence that I would have recorded it if I had heard it.

(Vol. C119, p. 15482.)

His notes do not contain those words or anything similar. He confirmed, however, that “Mr. Trudel is a very careful and precise man” (Vol. C119, p. 15484). He does not recollect anything that was said at the meeting except that, as the Minutes say, the Prime Minister asked that the whole question be referred to the Cabinet Committee on Security and Intelligence for consideration (Vol. C119, p. 15473). We must point out, however, that Mr. Butler’s handwritten notes of the discussion of this subject are extremely sparse compared to those of Mr. Trudel, whose notes appear to have formed a running record of the meeting.

(xi) Summary

105. The evidence of Mr. Trudel is that his handwritten notes reflect what was said on this subject at the December 1st meeting and further that he recorded, to the best of his ability, what was in fact said and that his notes did not amount to a paraphrase of the statements made at the meeting. Prime Minister Trudeau testified “. . . I am perfectly happy to recognize that words to that effect were said if it was written down here . . .”; Mr. Robertson testified that he did not doubt that Mr. Starnes said something like “the S & I has been doing illegal things for twenty years but never caught” or such language would not appear in Mr. Trudel’s notes.

106. In the extract from the typed minutes of the meeting of December 1, 1970 the following statement is attributed to Prime Minister Trudeau:

He noted that the image of the RCM Police could be misrepresented if the security and intelligence forces were caught breaking the law in order to obtain information. This situation had existed for some time in the RCM Police and he asked that the whole question be referred to the Cabinet Committee on Security and Intelligence for consideration.

Prime Minister Trudeau testified that he had no recollection of making that statement and, comparing Mr. Trudel’s notes with the typed minutes, pointed out that the handwritten notes indicated that these thoughts were, instead, expressed by Mr. Starnes and Mr. Turner. Mr. Pitfield was critical of the

typed minute for the same reason, that it contained incorrect attributions of statements to Prime Minister Trudeau.

107. We are satisfied that the Trudel notes record words used by Mr. Starnes at the meeting of December 1, 1970. Accordingly, we find that the extract from the typed minutes of the meeting is incorrect to the extent that it attributes the statements just quoted as if they had been made by Prime Minister Trudeau. However, we also find that those statements were made at the meeting of December 1, 1970, even if not by Prime Minister Trudeau, and that they may have been repeated by Prime Minister Trudeau in the summary of the whole matter which he gave at the conclusion of the discussion.

108. In our view the significance of that meeting is not so much in the *identity* of the person to whom the statements are attributed, as it is in *what* was said, provided that the statements were made by a person who would reasonably be expected to be knowledgeable on the subject under discussion. In our opinion, the Director General of the Security Service was such a person.

109. As stated above, no witness before us denied that the statements recorded by Mr. Trudel in his notes were in fact made. Mr. Trudeau and Mr. Robertson, however, offered an interpretation of the statements which, in effect, denies that those present at the meeting had brought home to them the fact that the Security Service had been engaged in the commission of crimes. The evidence of both these witnesses in essence suggests that *whatever* meaning was intended by Mr. Starnes when he used the words

misunderstanding of contradiction

— has been doing S & I illegal things for 20 years but never caught

— no way of escaping these things

those present at the meeting did not understand those words to mean that *crimes* had been committed by the Security Service. Mr. Starnes was handicapped in his evidence before us inasmuch as he also lacked a direct recollection of the meeting and was basing his evidence on a reconstruction of the matters discussed. It is, however, fair to infer from his evidence that the kind of “illegal things” to which he was referring at the meeting were those of which he was aware at that time.

110. Notwithstanding the evidence as to what was apparently meant by Mr. Starnes at the December 1 meeting and as to what meaning in fact was taken by those present, the fundamental question is what meaning a reasonable person present at the meeting would have taken from Mr. Starnes’ statements. In essence the issues arise whether or not those present:

— understood from the discussion that activities of the specific nature described by Mr. Starnes in his verbal evidence before the Commission and as referred to by Mr. Trudeau were then being engaged in by the R.C.M.P.;

— can properly be said to have been told by Mr. Starnes that illegal activities of some nature or kind were then being engaged in by the

Security Service, so as to require further inquiry and action by those present at the meeting; and

- by not undertaking such further inquiry and action, can be taken or were taken, to have tacitly assented to the continuation of those "illegal activities" of the Security Service of which Mr. John Starnes was then aware; or
- by not undertaking such further inquiry and action, can be taken to have tacitly assented to the continuation generally of "illegal activities" by the Security Service in the performance of its functions.

111. The minutes of the December 1, 1970 meeting indicate that the "whole question" was referred to the C.C.S.I. for consideration. However, at no subsequent meeting of the C.C.S.I. was there an item on the agenda which by its title called for a discussion of the "whole question". Nevertheless, at the C.C.S.I. meeting of December 21, 1970, the agenda included an item entitled "R.C.M.P. Strategy for Dealing with the F.L.Q. and Similar Movements". No doubt because that paper raised the difficulty of members of the R.C.M.P. or paid agents committing serious crimes in order to penetrate violence-prone groups, the witnesses before us have clearly assumed that the "whole question" raised by the discussion of the Law and Order paper at the C.C.P.P. on December 1, 1970, by implication merged, for discussion purposes, under the R.C.M.P. "Strategy" agenda item on December 21, 1970. In the next section we trace the historical development of the "R.C.M.P. Strategy Paper". At the conclusion of that section we shall see that at the C.C.S.I. meeting of December 21, 1970, the Committee agreed to "defer consideration" of "this topic until a future meeting".

(e) The second stream of Law and Order Documents

112. The issues raised in the second stream of Law and Order Documents centres on a more specific problem, namely, the risks attendant on the infiltration by human sources of violence-prone organizations.

113. The documents concerning this issue originated at a meeting of the C.C.S.I. held on November 6, 1970. At this meeting the C.C.S.I. determined that the R.C.M.P. should prepare a report for the next meeting of the Committee, setting out:

- (a) proposed strategy to deal with the F.L.Q. and similar movements;
- (b) a preliminary analysis of documentation available from seizures made so far;
- (c) statistical data having to do with the numbers of persons arrested, detained, released and charged, to clarify the points raised by the Prime Minister and other members of the Committee.

(Ex. M-86, Tab 7.)

114. This direction from the C.C.S.I. resulted in the preparation by the R.C.M.P. of a number of draft reports, of which our Commission has three, (Ex. M-36, Tab 14 (M22(c)(b)); M-36, Tab 8 (M22(c)(a); MC-85) and a final report (Ex. M-36, Tab 21 (M22)).

115. The first draft, prepared in mid-November 1970, was a six-page memorandum entitled "Police Strategy In Relation to the FLQ" and dealt with the subjects enumerated in the November 6th decision of the C.C.S.I. (Ex. M-36, Tab 14 (M22(c)(b)). At page 6 of the memorandum it was stated:

New techniques must be adopted by enforcement authorities if this threat is to be effectively countered. Increased emphasis must be placed on the infiltration of individual cells by human sources. In conjunction with this, the risk of allowing these sources to participate in lesser criminal activities must be accepted. Such participation is mandatory if they are to prove themselves and gain admission to cells. Without official sanction of such activities all penetration attempts are destined to failure.

This memorandum spelled out:

- (i) the method necessary to deal with the F.L.Q., i.e. infiltration by human sources; and
- (ii) the risk involved in employing this method, i.e. that the sources would, in the course of infiltration, of necessity become a party to "lesser criminal activities".

116. The second draft, similarly entitled, was dated November 20, 1970 and consisted of 12 pages (Ex. M-36, Tab 8 (MC22(c)a)). In the first paragraph on page 9 of that draft it was stated:

More aggressive techniques will have to be adopted by enforcement authorities if this threat is to be effectively countered. Increased emphasis must be placed on the infiltration of individual cells by human sources. In conjunction with this however, the risk of allowing these sources to participate in lesser criminal activities will have to be accepted. Such participation by sources may often be necessary if they are to prove themselves and gain admittance. The risks of such operations will have to be faced at an official level which may have to include immunity from criminal prosecution.

117. Significant changes in language were effected in the second draft of the R.C.M.P. report. The phrase "New techniques..." became "More aggressive techniques..."; "participation" in "lesser criminal activities... may often be necessary" as compared with the earlier statement that such participation was "mandatory"; and one kind of official approval is suggested for the first time: "immunity from criminal prosecution".

118. Unlike the first draft, the second draft, at pages 10 and 11, sets out the intended strategy of the R.C.M.P. "for the purpose of keeping the government informed of current situations and for countering the F.L.Q. and similar groups". The intended strategy was to include:

- 1. The continuation of present efforts to penetrate these groups by every means possible, including, in particular:
 - (a) infiltration;
 - (b) recruitment of members from within;
 - (c) technical penetrations.

On the face of this document it seems reasonably clear that the intended R.C.M.P. strategy included infiltration and the attendant risk that the infiltrator may become a party to "lesser criminal activities".

119. This second version of the report was delivered to Mr. McIlraith and to Mr. R.G. Robertson, the then Secretary to the Cabinet, by letters from former Commissioner Higgitt dated November 20, 1970 (Ex. M-36, Tab 9; Ex. M-20 and M-21). The transmittal letter to Senator McIlraith stated: "This is the report we discussed in draft form a few days ago" (Ex. M-20).

120. This second draft was also before the Special Committee of the Security Panel at its meeting of November 27, 1970 (Ex. M-36, Tab 13; Ex. M-22, Tab 6). That Committee was chaired by Mr. Robertson and was attended by 12 other senior officials of government including Mr. Côté, Mr. D.S. Maxwell, then Deputy Minister of Justice, Commissioner Higgitt and Mr. Starnes.

121. At that meeting the following discussion was recorded in the minutes of the meeting:

Commissioner Higgitt and Mr. Starnes explained ... that the Security Service had been breaking and entering in order to place technical aids for years, that such activity against foreign agents would continue and there should be the same approach to dealing with native Canadians seeking the destruction of our society by similar methods, even if for allegedly different reasons. The risk of eventual exposure was virtually inevitable, but worth the result; risks in infiltration applied not only to this area, but to paid agents who, if jailed as accomplices to a criminal act in the process of infiltration, could not be protected by any existing mechanism. The Chairman agreed with Commissioner Higgitt that Ministers *must* know what was involved and the attendant risks, both at the present level of activity and of any accepted increase in it. He considered that the RCMP must be totally frank with Ministers, who in the past had been reluctant to face up to problems of this sort. A detailed, thorough examination of the problem would be essential at the Cabinet Committee on Security and Intelligence. It would also be important for Ministers not to misinterpret the Commissioner's previous denials of criminal activity on the part of the Force: to which Mr. Starnes replied that there was a world of difference in investigating dynamite thefts and the techniques used, as opposed to breaking and entering to introduce technological devices in cases handled by the Security Service.

(Ex. M-36, Tab 13; MC-22, Tab 6, pages 4, 5.)

122. This discussion brought to the attention of those present at the meeting the following activities of the R.C.M.P.:

- (a) breaking and entering to introduce technical devices and,
- (b) the fact that paid agents employed by the R.C.M.P. to infiltrate target groups may become accomplices to a criminal act engaged in by members of those groups whether or not such activity was approved by Headquarters.

123. The minutes of the meeting record Mr. Robertson, as Chairman of the Special Committee, as having indicated that a "detailed, thorough examination of the problem would be essential at the C.C.S.I." and further, that "the R.C.M.P. must be totally frank with Ministers, who in the past had been reluctant to face up to problems of this sort".

124. In his testimony before us Mr. Robertson stated, with reference to these passages, that he recalls

... very clearly personally saying at the meeting that I thought there was no prospect whatever that they would be given the authorization to permit personnel to commit crimes, in order to penetrate.

(Vol. C108, p. 14020.)

125. As we have indicated, we had a copy of the minutes of the Security Panel meeting of November 27, 1970, when we examined witnesses concerning the "R.C.M.P. Strategy Paper" in late 1979 and 1980. However, as we have stated early in this chapter, in March 1981 we became aware of the existence and content of notes made at that meeting by the late Mr. Beavis. In his notes, two pages are devoted to notes of what was said during the discussion of the "R.C.M.P. Strategy Paper". It will be recalled that on page 9 of that paper it was said: "The risk of allowing these sources to participate in lesser criminal activities will have to be accepted". Mr. Beavis, under the heading "P-9", wrote:

St — crim acts — for 20 yrs. & will get caught

Ch — ensure good disc in CC — *frank* — & make clear what Hig meant re crime

The first of those lines we interpret as saying:

Starnes — criminal acts — for 20 years and will get caught.

Mr. Starnes was recalled to testify on April 2, 1981, only five days after we had first received and read Mr. Beavis' longhand notes (Exs. MC-202, 203, and 204). He was asked whether these notes enabled him to recall what went on at that meeting other than what he had previously testified to. He replied "Not really". He said he "can't honestly say that" he remembers making the statement "Crim acts — for twenty years — will get caught" (Vol. C129A, p. 17264). Mr. Starnes was asked whether he has any memory of Mr. Robertson having said that the R.C.M.P. had little hope of getting the authority of government for the commission of illegal acts in the future, whether on the part of R.C.M.P. or paid agents. Mr. Starnes answered: "No. That would have depressed me even more, and I certainly would remember that" (Vol. C129A, pp. 17288-9).

126. Following the November 27th meeting, a third draft of the R.C.M.P. report was prepared by the R.C.M.P. and was delivered by Commissioner Higgitt to Mr. Côté, to Mr. McIlraith's office and to Mr. D.F. Wall, then Secretary of the Security Panel, by transmittal letters dated December 4, 1970, respectively (Ex. M-36, Tab 16; Ex. M-10 to M-13). The letter to Mr. Wall stated in part as follows:

The document has been amended to reflect the discussions at that meeting and the subsequent discussions on 'law and order' which took place on December 1st, 1970 in the Cabinet Committee on Priorities and Planning. I assume that, in accordance with decisions reached on December 1st, this paper will be further discussed at the next meeting of the Cabinet Committee on Security and Intelligence.

The words "that meeting" refer to the meeting of the Special Committee of the Security Panel of November 27, 1970.

127. Some confusion is apparent on the evidence before us as to which draft in fact was the draft forwarded to Mr. McIlraith's office and to Messrs. Côté and Wall on December 4, 1970. Ex. MC-85, a seven-page memorandum again entitled "Police Strategy in relation to the F.L.Q." contains references to arrest statistics as at December 2, 1970. Accordingly, it seems probable that the draft comprising Ex. MC-85 before this Commission is the third draft of the R.C.M.P. report referred to in former Commissioner Higgitt's correspondence of December 4, 1970. Paragraph 19 of Ex. MC-85 stated, in part, as follows:

If such continuing revolutionary activities are to be effectively countered, an increased effort to penetrate movements like the FLQ by human and technical sources will have to be undertaken. This at once raises the difficult question of providing some kind of immunity from arrest and punishment for human sources (usually paid agents) who have to break the law in order successfully to infiltrate movements like the FLQ. What should be the responsibility of the government towards a member of the Security Service or an agent paid by it who is arrested for committing a crime in the line of duty as it were?

Paragraph 21 stated in part:

21. To keep the government informed of current developments and to counter the continuing activities of the FLQ and similar groups throughout Canada, the RCMP, propose, inter alia:

1. Continuation of present efforts to penetrate such groups by every means possible, including, in particular:

- (a) Infiltration;
- (b) Recruitment of members of revolutionary movements;
- (c) Technical penetration.

128. Mr. Starnes then redrafted the report in its final form which was entitled "RCMP Strategy for dealing with the FLQ and Similar Movements" (Ex. M-36, Tab 21 (M-22) which we shall hereinafter call the "R.C.M.P. Strategy Paper". This document was forwarded to Mr. Robertson by former Commissioner Higgitt by letter dated December 14, 1970 (Ex. M-18). That letter concludes: "This document, which is intended to replace an earlier paper on R.C.M.P. strategy, has been drafted to reflect recent discussions by Ministers and senior officials".

129. Mr. Starnes forwarded a copy of the same report to Mr. Côté by letter dated December 15, 1970 (Ex. M-36, Tab 17, M-19). In this letter he stated that the paper had been "... revised in the light of recent discussions which have taken place between Ministers and senior officials". He concluded: "I hope it more adequately reflects the requirements of the Prime Minister and his colleagues, and that it deals lucidly and frankly with some of the more delicate problems which we face in attempting to carry out our responsibilities".

130. It would seem reasonable to infer that the "recent discussions" referred to by Commissioner Higgitt and Mr. Starnes in their transmittal letters were

those that had occurred at the meeting of the Special Committee of the Security Panel on November 27, 1970, and at the meeting of the C.C.P.P. on December 1, 1970 (See Ex. M-13 and Vol. C29, p. 3597: Evidence of Mr. Starnes).

131. Paragraphs 5, 9 and 10 of the final version of the report read as follows:

5. If such continuing revolutionary activities are to be effectively countered, an increased effort to penetrate movements like the FLQ by human and technical sources will have to be undertaken. We have had only limited success in being able to penetrate the FLQ and similar movements with human sources. Changes in existing legislation will be required if effective penetration by technical means is to be achieved. The greatest bar to effective penetration by human sources is the problem raised by having members of the RCMP, or paid agents, commit serious crimes in order to establish their bona fides with the members of the organization they are seeking to infiltrate. Among other things, this involves the difficult question of providing some kind of immunity from arrest and punishment for human sources (usually paid agents) who have to break the law in order successfully to infiltrate movements like the FLQ. What should be the responsibility of the Government towards a member of the Security Service or an agent paid by it who is arrested for committing a crime in the line of duty as it were? What measures can be suggested by the law officers of the Crown to ensure that such persons escape a jail sentence and a criminal record, without prejudicing their safety? Perhaps those clauses of the Letters Patent of the Governor-General having to do with pardon might be resorted to in such cases, but it is difficult to see how this could be done without revealing the true role of the person concerned. . .

9. It will be obvious from a reading of the account of the discovery by the RCMP of Mr. Cross and his abductors that this probably could not have been successfully accomplished without the interception of telephone conversations and that electronic eavesdropping was of assistance to the investigation. Yet it should be realized that the application of telephone interception techniques in coping with the FLQ and indeed, with similar revolutionary activity across Canada, has only been possible by a most liberal interpretation of the provisions of the Official Secrets Act. The report on the Royal Commission on Security makes a number of useful comments about the interception of telephone conversations and electric eavesdropping, and in particular, about the importance of ensuring that any legislation contemplated to deal with such matters should contain a clause or clauses exempting interception operations for security purposes from the provisions of that statute.

10. In addition to these broad strategy plans, we propose to intensify our efforts in such obvious ways as the infiltration of the FLQ, selected surveillance, recruitment of members of revolutionary groups and the development of improved techniques to collect, collate and assess raw intelligence, e.g. computers and information systems analysis.

132. This final version of the report was then distributed to the members of the C.C.S.I. and was before that Committee at its meeting of December 21, 1970. The Minutes of the meeting of the C.C.S.I. of December 21, 1970, as they relate to these pages, record that the Committee agreed to defer consider-

ation of this topic to a further meeting (Ex. M-36, Tab 23). In a memorandum dated December 23, 1970 to his immediate subordinate, Mr. Starnes recorded of the December 21st meeting of the C.C.S.I. that

the Prime Minister said that he assumed I would like to have some discussion of the R.C.M.P. paper dealing with strategy, and, as a consequence, suggested that it be put aside to a later date.

(Ex. M-36, Tab 24.)

133. The matter does not appear to have again been discussed by the C.C.S.I. or the C.C.P.P. at any subsequent meetings. Mr. Starnes testified that he, to the best of his present recollection, did not again discuss the matter with the Prime Minister or with the Ministers. He stated further in evidence that he has no recollection of pressing for the matter to be raised again for discussion; according to his recollection, the thrust of the discussions in the Cabinet Committee meetings following December 21, 1970 shifted to other legislative proposals (Vol. 103, pp. 16220-1, 16267, 16269 and 16773).

134. In the light of the contents of the final version of the R.C.M.P. report, viewed in the context of the language contained in its predecessor drafts, the issue arises whether the legal problems raised as risks inherent in infiltration efforts by the Security Service referred to past problems, existing problems or prospective concerns faced by the Security Service.

135. In this regard Mr. Starnes testified that the infiltration problems described in paragraph 5 of the final version of the R.C.M.P. report, that is, for example, the problem raised by having members of the R.C.M.P. or paid agents commit "serious crimes" in order to establish their bona fides with the members of the target organization, and the problem of providing some kind of immunity from arrest and punishment for sources who "have to break the law" in order to successfully infiltrate, were "current or prospective problems" and not problems that had been experienced by the Security Service in the past (Vol. 102, pp. 16201-3). Mr. Starnes stated in evidence that he did not have any knowledge of "serious crimes" having in fact been committed by undercover members or agents in order to achieve infiltration (Vol. 102, p. 16198).

136. Former Commissioner Higgitt in his evidence agreed that these portions of the final report referred to prospective problems and did not support his previous testimony which had been to the effect that he discussed with Ministers the concept that there were occasions on which the Security Service had broken the law in carrying out its responsibilities. However he testified that paragraph 10 of the final report set out an intended course of action by the Security Service that would involve the risks described in paragraph 5 (Vol. 111, pp. 17100-1). He stated further:

I don't think at that time that I knew that our paid agents were engaging in criminal activities.

(Vol. 111, p. 17140.)

And further:

From memory I don't think we ever faced a case where we had to do one of those things ... I don't of memory, have a case, by luck or by good management, where we were in the end absolutely faced with this sort of thing.

(Vol. 111, pp. 17101-2.)

(f) Disposition of the two streams of documents after December 21, 1970

137. There is no direct evidence before us as to how or why this particular item failed to reappear on the agenda of the C.C.S.I. Mr. Robertson was questioned extensively about this, and about the system. Because of the importance of the matter we set forth his evidence at some length (Vol. C108, pp. 14011-7):

Every Secretary kept a list of the items that were before whatever Committee it might be. The Secretary would periodically review — he would record the disposition of the item, and if it was disposed of, he would strike it off. If it was still on his list it meant that it had not been disposed of or it had not been dropped. So that he would have a record of these items and he would review that periodically. But, as I say, the situation might emerge in which circumstances had changed or a Minister had said I'm not going to pursue that or something. That might have happened. In which case it would be struck off. But it would not be a matter — if I get the point of your question... it would not be a matter of just forgetting about something and losing sight of it.

Q. So that it would be your view, and I am aware that you do not have documentation on this point in front of you, but it would be your view, I take it, that the eventual removal of this particular item from any agenda of this Committee, would be the result of a conscious decision on the part of somebody?

A. That's correct.

Q. In other words, it would not have gotten lost in the shuffle?

A. It would not have got lost. I think this system was good enough that things did not get lost. There was a reason — mind you, things often did get delayed, and delayed for a variety of reasons. To that extent events might alter them or overtake them. But certainly, the items simply would not be forgotten or lost.

Q. So that it might be a decision based upon a turn of events that would make it unrealistic to put the item back on discussion, when all the problems associated with Item X might have receded into past history?

A. That's right. In this particular case I can only speculate that it could be that Ministers were not back together .. I don't remember how long the adjournment was. It might have been until the end of January. That would be not unusual. They might not have been back until February. Discussion, if my memory is right, was still involved on the question of special measures and legislation of that kind. I don't remember when that was completed. That sort of discussion could have been considered by the new Solicitor General as something that ought to be considered before this matter came back. By the time that was disposed of, it might have been the end of April or something ... By which time, penetration of the FLQ might be considered not nearly as important an issue. So it might have been dropped for that kind of reason.

Q. And the planning of an agenda for a meeting of the Cabinet Committee on Security and Intelligence would be the responsibility of the Secretariat of that Committee?

A. That's correct.

- Q. Do I gather from what you said earlier this morning, that because the Prime Minister has so many other duties, his Chairmanship of this particular Committee is unlikely to result in his being as involved in such matters as the preparation of agendas and the review of minutes and so forth, as might be the case with some other Committee?
- A. Oh, definitely. The Prime Minister would not be consulted as to the agenda or the sequence. This would be the Secretaries' responsibility and in the briefing note to the Prime Minister it was not infrequent, and is not now infrequent, to say something such as I suggest you take the items in the following sequence, and that might not be the sequence in the agenda. Then there would be reasons why such and such a sequence might be desirable: Mr. X has to go to a speaking engagement in Montreal and leave at such and such a time or something of that kind.
- Q. Was it usual for a committee such as the Cabinet Committee on Security and Intelligence, to alert members and other people who were expected to be present, some time in advance, so that if they had items they wanted to add to the agenda, they could before the agenda was finalized?
- A. Yes. There were rules — the details of which I now forget — which prescribed periods in advance of the meeting by which notice had to be given of items for a meeting. They also prescribed when Ministers had to receive agendas and documents, to give them adequate time to prepare for them.
- Q. It would, I take it, be your view that no argument could be advanced by a person who was present at this Committee, that the mere fact that an item on the agenda had not been reached, was in any way to be interpreted as the matter having been rejected or turned down or turned back or not to be brought up again on a future agenda?
- A. No.
- Q. If we look at the list of people who were in attendance at this particular meeting, I would assume it is a fair understanding to assume that at least the Solicitor General — soon to be replaced by his successor . . . the Deputy Solicitor General, the Commissioner, the Director General of the Security Service and possibly, the people from the Department of Justice, would all in the normal course of events be expected to have this particular item in mind, if they wanted to bring it up at a future meeting? It related even more specifically to their duties, than to the duties of Mr. Cross from the Department of Manpower and Immigration and certain others who were present?
- A. That is correct. It, of course, would be of particular concern to the Commissioner and Mr. Starnes. Because it was in a document that came from the RCMP and was relating to the security work.
- Q. Again recognizing that you do not have documentation on this point before you, you would be quite sure in your own mind that if a further meeting of the Committee had been scheduled for the end of February, and notice was given, it would still be open to them to file in writing or via a phone call, a special request that this particular item be on that agenda, if it were not already shown to be on the draft agenda?
- A. Yes.

138. Mr. Robertson's knowledge of the system that existed at that time was undoubtedly extensive. As is indicated in the foregoing passage, his view is that the removal of this item from any agenda of the Committee would be the result of a conscious decision on the part of somebody. We have no evidence as to who made such a decision, if there were one made. We note Mr. Robertson's testimony that the secretariat of the C.C.S.I. would not consult the Prime Minister as to the agenda. As for the reason such a decision might have been made, we note Mr. Robertson's speculation that by the spring of 1971 the issue raised in the R.C.M.P. Strategy Paper might have been dropped because penetration of the F.L.Q. had become an issue of lesser importance with the passage of time.

139. Finally, we think that it is important not to lose sight of the fact that it would have been open to several persons, at any time after the deferment of the matter at the C.C.S.I. meeting of December 21, 1970, to write or telephone the secretariat of the committee, to ask that this item be placed on the agenda for a subsequent meeting, if it were not already on such an agenda.

(g) Overview and conclusions

(i) Did documents which disclosed the possible future commission of offences by members or agents in the course of penetrating violence-prone groups also disclose that the R.C.M.P. had engaged in activities "not authorized or provided for by law"

140. As noted above, the second stream of Law and Order Documents relates to a particular problem facing the Security Service, viz: the infiltration of violence-prone organizations and the risks attendant thereon. These documents describe an existing problem that inhibited effective infiltration by R.C.M.P. members or paid agents into violence-prone organizations such as the F.L.Q. These documents do not, however, on their face, indicate that R.C.M.P. sources (whether members or paid agents) as at December of 1970 had engaged in criminal activities or activities contrary to law in order to achieve effective penetration, whether with or without the authority or acquiescence of the Security Service. (More specifically, the testimony of former Commissioner Higgitt and Mr. Starnes before us is that the commentary set forth in these documents with respect to such infiltration risks was entirely prospective in nature — in other words, that crimes might have to be committed in the future in order to penetrate groups.) We conclude unhesitatingly that this stream of documents did not disclose to government officials or Ministers that members or agents of the R.C.M.P. had committed unlawful acts.

(ii) Did documents which discussed the "inherent contradiction" of the Security Service, or discussion of those documents, result in senior officials and Ministers being advised that the Security Service had been carrying out illegal activities?

141. The first stream of documents and the discussions relating to them raise a much broader issue. The nature of the broader issue, as set forth in Mr. Starnes' document of November 26, 1970 (Ex. M-36, Tab 11), is whether senior officials and Ministers were advised that the Security Service had been

carrying out illegal activities for some twenty years in the carrying out of its responsibilities.

142. No witness has any memory of what Mr. Starnes said. The evidence is that of Mr. Trudel's notes. It has been submitted to us by counsel for the government that his notes would not be admitted into evidence in a court of law, and are not reliable. In our Appendix to this Part we shall deal with each of these points in turn, and then deal with a third issue raised by counsel for the government. Our conclusions are that his notes would be admissible in a court of law, are admissible before this Commission of Inquiry, and are reliable. On the third issue, we give our reasons for reporting the facts even though the words were spoken at a meeting of a cabinet committee.

143. We find that on December 1, 1970, Mr. Trudeau, Mr. Turner and other persons present were told that the Security Service had been doing illegal things for twenty years. We are satisfied that Mr. Trudel's handwritten notes record words used by Mr. Starnes at the meeting of December 1, 1970, namely that the Security Service had been doing illegal things for 20 years and had not been caught. We further find that those notes support the conclusion that the Honourable John Turner heard what Mr. Starnes said since he replied "If you are caught... then what of police image... should you not be dissociated". As for Prime Minister Trudeau, although it is only fair, in our opinion, not to attribute to him all the statements in the typed minutes which appear to us to have been really the minute-drafter's summary of what was said by others at the meeting, we do consider that the notes disclose that he heard and reacted to the statement made by Mr. Starnes.

144. We also find that there is no evidence to support a conclusion that either Mr. Trudeau or Mr. Turner was made aware of any specific kinds of activity of an illegal nature, in which the Security Service was engaged. Nor is there any evidence before us as to what those who heard Mr. Starnes' words understood them to refer to.

145. At the conclusion of Part I of this Report we made reference to our views concerning expression of opinion or passing of judgment as to the conduct of Ministers and senior public servants. The information presented to the meeting of December 1, 1970 that "illegal things" had been engaged in for twenty years past by the Security Service, resulted in, to employ the words we used in Part I, steps being taken to "deal with it in some other way". These steps consisted of a decision on the part of the Prime Minister, and recorded in both the handwritten notes of the meeting and the final Minutes of the Meeting "that the whole question be referred to the Cabinet Committee on Security and Intelligence for consideration". We accept that the Committee which was meeting on December 1, i.e. the C.C.P.P., was not the Cabinet Committee in which this subject matter raised by the Maxwell memorandum should appropriately be discussed. The subject matter was referred to the Cabinet Committee on Security and Intelligence whose responsibility was to deal with matters of this nature.

146. The evidence of Mr. Trudeau, Mr. Turner and Mr. Starnes establishes that, neither at the meeting itself nor afterward was any inquiry made by or at

the instruction of Mr. Trudeau or Mr. Turner. We have already noted Mr. Starnes' testimony that after December 1 he did not receive any inquiry from any government official or Minister as to what he had meant. Mr. Trudeau testified as follows:

Q. Do you recall any discussion after the meeting, with Starnes, concerning what he was talking about?

A. No, I don't.

(Vol. C98, p. 12944.)

Mr. Turner testified as follows:

Q. Do you recall this topic — I'm sorry, do you recall ever participating in later assemblies where this topic would have been discussed?

A. I don't.

(Vol. C118, p. 15344.)

147. Thus it would be open to infer that Mr. Starnes could reasonably conclude, after the meeting of December 1, and after there were no inquiries made of him about these illegal "things" during the weeks and months that followed, that the government by implication assented to the continuation of those activities. That inference may have been unjustified in that the government may have had no intention to give any such assent, and no one has any memory of how the matter was dealt with. It is therefore impossible to reach any conclusion as to whether there was any such assent intended. However, the matter seems to us to be of academic importance, for Mr. Starnes at no time has said that he permitted any of the institutionalized practices of which he was aware (such as surreptitious entries and speeding by drivers of Watcher Service vehicles) to continue *because* he considered that the government had assented to such activities. Indeed, Mr. Starnes was asked whether he remembered having, as the months went by after November 27 and December 1, 1970, addressed his mind to this and having concluded in his own mind that, in the absence of being told to stop any activities he considered to be illegal, he had, in effect, authority from the government to allow such activities to carry on. He replied:

I don't think I would have rationalized it quite the way you have put it. My mind doesn't work quite like that. Probably the net effect would be the same, but I don't think I sat down and looked at myself, as it were. I am not that kind of a person. But probably the net effect would have been just that.

He was then asked how his mind would "work so that the net effect would be the same". His reply, and a further question and answer, were as follows:

A. I think my concerns would have been more how to get an extremely difficult job done in the circumstances you have described, with a minimum amount of risk and damage to the people who were working for me, because they were on the front line, not me.

Q. I interpret that answer as meaning: I wouldn't have addressed my mind to any implication of authority arising from not being told to stop, but I would have taken the lack of help that I received off my back and looked forward and decided to address my mind to what practical ways there might be of enabling people in the field to get the job done with the minimum possible legal and other risks.

Q. Is that right?

A. That is correct.

(Vol. C129A, pp. 17289-91.)

148. Nor has he ever claimed that he communicated to any other member of the R.C.M.P., as a fact or understanding or in any way at all, that the government had given its implied assent to the R.C.M.P. Security Service's doing illegal things. Nor did he claim that any subordinate to whom he may have said that he had informed the government that the R.C.M.P. had been doing illegal things interpreted the lack of a request for details as implied authority to carry on with illegal practices. Indeed, Mr. Starnes was asked whether, after November 27 and December 1, 1970, he ever told any subordinate in the Security Service, that he had told the government that the R.C.M.P., in its security and intelligence work, had been doing illegal things but had never been caught, and that he had not received any request for details. His reply, and further questions and answers, were as follows:

A. I'm quite sure that I would have come back on occasion just steaming, to my people who were working for me like Draper and Sexsmith and so on, and said — you know, I won't use the language which I might have used, but I would have come back probably extremely irritated and frustrated on these very points: Now, we are getting nowhere; we are getting no advice; no help.

Q. But you have no memory of this?

A. No, I haven't, but I am darned sure that I must have, knowing myself.

Q. Do you have any memory that any subordinate, on any such occasion when you said anything of that sort to them, replied anything to the effect: Well, I guess that gives us the green light we need, the back-up we need, the authority we need to carry on with any particular practice?

A. No, I can't say that.

(Vol. C129A, p. 17293.)

The same is true of Mr. Higgitt; he has never told us that he allowed any institutionalized practices of which he was aware to continue because he considered that his "political masters" (as he calls them) had given their implied assent to them. At most they have invited us to note that the government knew certain things; but they have not asserted that they regarded such knowledge as a defence for their allowing institutionalized practices to continue.

149. Even more clearly, knowledge by the government in December 1970 that the R.C.M.P. in its Security and Intelligence work had been doing illegal things, without further inquiry or remonstrance, cannot reasonably be taken as implied assent to any subsequent illegal acts in which Mr. Starnes was involved or of which he knew, which went beyond the bounds or practices which had been institutionalized by December 1970 and were then known to him. To treat the matter otherwise would be to regard the government's silence as *carte blanche*, and we think that it is unreasonable to infer that a failure to inquire or to direct cessation of "illegal things" can be taken as *carte blanche*. In any event, the only two incidents of which we are aware and that we think *may*

have involved illegal conduct on the part of Mr. Starnes after 1970 were Operation Ham (described in Part VI, Chapter 10) and the destruction of an article (described in Part IV, Chapter 9). In neither of these cases has Mr. Starnes claimed before us that his conduct was motivated by reliance upon tacit or implied consent by the government to "illegal things". Indeed, Mr. Starnes was asked whether, after speaking in government circles of the commission of criminal acts and the doing of illegal things on November 27 and December 1, 1970, and after not being asked for details or being told to stop, he ever authorized any particular practice or particular act or particular operation, and in doing so, relied, in his own mind, on the fact that he had told this to government and not been told to stop illegal activities. He replied:

A. Oh, I get the purport of your question, but I wish I could answer it in another way. I simply cannot say that, you know, I remember any specific occasion that that sort of reasoning would have occurred to me.

(Vol. C129A, p. 17294.)

150. As far as officers subordinate to Mr. Starnes and Commissioner Higgitt are concerned, or the "foot-soldiers" of various ranks who carried out operations whether of an institutionalized or of a special nature, we do not consider that they can point to the government's knowledge of December 1970 as justification for what they did, if it was otherwise illegal. The kind of argument based on "apparent authority" which has developed in the United States, and was discussed by us in our Second Report, Part IV, Chapter 1, cannot succeed on that ground unless those who advance it can assert that they believed that what they were doing was done with the authority of the government or some official in government who they thought could cloak them with authority. No evidence has been presented to us by any member of the R.C.M.P., or found by us in any documents, that would support an inference that any member of the R.C.M.P. performed any act because he thought that it was covered by a blanket of authority consisting of what he understood had been tacit or implied assent by the government to the performance of otherwise illegal acts in order to protect the security of Canada.

151. Thus, our view is that the knowledge of the government, and its subsequent failure to inquire or to direct the cessation of "illegal things", whatever may be said of those facts in political terms (as to which, for the reasons we have given, we make no comment), has no relevance to the legal quality of any acts by members of the R.C.M.P. committed thereafter. Nevertheless, because a prosecuting authority or a judge may be of a different view, we think that the facts of such knowledge and subsequent lack of inquiry or direction to desist should be made known to those who are directly affected by this Report.

152. In this section of this Part we have discussed the history of the Law and Order documents in great detail. We have found that the matters placed before Ministers and senior officials by the R.C.M.P. were never fully discussed and resolved within government. Although we have concluded that the submissions made to Ministers and senior officials cannot relieve members of the R.C.M.P. from responsibility for subsequent illegal acts, there is no doubt in our minds that an attempt was made by senior members of the R.C.M.P. to have aspects

of the question of illegal acts discussed at the highest level of government, both as to what had happened in the past and as to what might take place in the future. This confirms the testimony of senior officers of the R.C.M.P. that the problem of illegal acts was, to a certain extent, raised with Ministers and senior officials over the years.

B. R.C.M.P. ATTITUDE TOWARDS MEMBERS OR SOURCES

ENGAGED IN "SENSITIVE OR SECRET OPERATIONS"

153. Here we discuss another body of evidence, which related to a "policy" or "procedure" that had been developed within the R.C.M.P. to apply if R.C.M.P. members or paid agents became exposed to court process by virtue of their involvement in "sensitive or secret operations".

154. Documentation in R.C.M.P. files indicated that in the summer of 1970 an issue arose within the R.C.M.P. as to what would happen to members of the Force who "became subject to criminal and civil process" as a result of their participation in "sensitive or secret operations". As a result of our discovery of this documentation, and in the light of the existence of the Law and Order Documents, we heard evidence from several witnesses as to whether in fact such a "policy" or "procedure" as referred to above existed within the R.C.M.P. and as to whether or not Ministers or senior officials were informed by the R.C.M.P., or otherwise became aware, of the existence of such a "policy" or "procedure".

155. The manner in which the question arose, and how it was dealt with within the R.C.M.P., were described by us as follows in Part IV, Chapter 2 of our Second Report:

7. ... In June 1970, some members of the Security Service, in a training class, questioned their position if criminal or civil action were to be brought against them. Their concern referred to carrying out what were described, in a memorandum (Ex. M-1, Tab 2) summarizing the discussion, as "certain tasks performed by S.I.B. [Security and Intelligence Directorate] or C.I.B. personnel" that required "that the law be transgressed, whether it be Federal, Provincial or Municipal law, in order that the purpose of the undertaking may be fulfilled". The memorandum observed that "The particular task will have been sanctioned in many cases by a number of officers who will at least be aware of the means required to achieve the end product, and who will have given their tacit or express approval".

8. The members of the class wanted to know to what extent the Force would back its members in these circumstances, whether their families would be cared for in the event of imprisonment and where members stood in terms of future employment...

10. A three-page policy memorandum was then prepared for Commissioner Higgitt's approval. This memorandum, in addition to incorporating the points noted above, contained the following paragraph which is ambiguous and may even contradict itself:

It must also be borne in mind, of course, that where a member is directed to perform a duty which may require him to contravene the law for any purpose or where the means required to achieve a specific end can reasonably be foreseen as illegal, a member is within his rights to refuse to do any unlawful act. Such a refusal may be given with *impunity*. Though no disciplinary action would be taken, *a transfer may be indicated in such a situation* (Ex. M-1, Tab 7).

(The emphasis is ours.)

11. Commissioner Higgitt refused to sign this policy memorandum. Instead he decided, and noted on the memorandum that

Under no circumstances should anything of this nature be circulated in written or memo form. The reasons ought to be obvious. I do not believe this is the problem it is being made out to be. Members know or *ought* to that whatever misadventure happens to them the Force will stand by them so long as there is *some* justification for doing so.

(Ex. M-1, Tab 7.)

In view of this decision, the Deputy Commissioner (Administration) instructed the Director of Organization and Personnel to put the communications concerning this matter away "in secret envelope on policy file", and that the contents were "to be relayed to S. & I. and C.I.B. classes orally when convene [sic] at H.Q. Ottawa". The draft policy memorandum was conveyed to an officer for the information of lecturers and to Mr. Starnes.

12. In his testimony concerning this policy matter, Mr. Higgitt made several noteworthy points. First, he confirmed the validity of the problem which gave rise to efforts within the R.C.M.P. to develop the policy memorandum referred to above:

The problem at the moment was members of the Force... getting themselves into difficult situations as a result of quite straight forward, honest carrying out of their duties, getting themselves into difficulties, it could be with transgressions of a law or it could be with a number of other things; it was a problem that was inherent in not only the Security Service, in the law enforcement generally, that occasionally placed members in difficult circumstances.

(Vol. 88, p. 14452; see also Vol. 85, pp. 13965-6 and Vol. 87, pp. 14330-1.)

13. Second, it is not clear from his testimony what Mr. Higgitt believed the R.C.M.P. policy to be for dealing with this problem. At several points, Mr. Higgitt stated that the draft policy memorandum was, in effect, Force policy:

Q. So, the text of the draft letter did remain the policy as it is explained there, as it is expressed there?

A. Right, in essence it was the policy.

(Vol. 85, p. 13948; see also Vol. 84, p. 13751.)

Nonetheless, at other points, he testified that the draft memorandum did not represent Force policy. Rather, he said that his handwritten note quoted above was the extent of Force policy (Vol. 87, pp. 14282, 14289, 14303). Notwithstanding this lack of clarity about what precisely was Force policy, Mr. Higgitt testified that this policy had been in effect for over 30 years

and that his handwritten note was not intended to change the policy in any way. Rather, it was "restating the obvious" (Vol. 85, p. 13992 and Vol. 86, p. 14190). Furthermore, he gave three reasons why the policy on this matter should not have been written down and circulated among R.C.M.P. members:

(a) the policy was well known to members (Vol. 84, p. 13751 and Vol. 86, pp. 14190-1);

(b) the problem addressed by the policy was not as significant as it was being made out to be and publication of the policy might have the effect of "... giving some degree of freedom which, certainly, I did not wish to give in that way to members at large to engage in this sort of thing" (Vol. 84, pp. 13751-2); and

(c) Mr. Higgitt believed that there was "... really no answer that one can put in written form to the problem involved here... you could not begin to describe the various things that could happen. You can't describe, except in a very general way, what the Commissioner's response would be to those things" (Vol. 87, pp. 14282-3). Notwithstanding these reasons for not writing down the policy, Mr. Higgitt believed that the policy should have been communicated orally to those members of the Force likely to be affected (Vol. 85, p. 13940).

14. Third, contrary to the draft policy memorandum, Mr. Higgitt testified that the Force would not necessarily stand behind the member who obeyed an unlawful order given by a superior:

Q. Would I be correct then that in a situation, say, where a senior N.C.O. instructed a constable to do something that involved a transgression of the law, that under your policy, that the constable would be protected by the policy, but the N.C.O. would not be?

A. That is a question that could only be answered given the circumstances. Protection wasn't necessarily always involved.

(Vol. 85, pp. 13992-3.)

On the other hand, Mr. Higgitt stated that if a member disobeyed an unlawful order, he might well be transferred, although in Mr. Higgitt's view, such a transfer would not be "a disciplinary matter" (Vol. 85, pp. 13959-64).

156. We concluded in our Second Report that "it would be surprising if [a member of the R.C.M.P.] did not find Force policy on this matter vague, confusing and at times contradictory". In other words, there was a "policy" or "practice" but just what it was is not susceptible of definition. As to whether the "policy" or "practice" (whatever it was) was intended to provide protection to members of the Security Service or paid agents who would become involved in criminal activities in order to infiltrate groups, we have found no evidence that it was.

157. Mr. Higgitt was asked in evidence whether or not he had discussed this policy or procedure with those persons to whom he was responsible. He testified in this regard:

I discussed it with Ministers, from time to time, in oral as well as in written form. The problem was placed on Ministers' desks.

Q. And did you, at any time receive any instructions from the Ministers with whom you discussed it, that such a policy was inappropriate?

A. No, I never did.

(Vol. 84, p. 13756.)

158. Asked whether he discussed it with Mr. McIlraith, Commissioner Higgitt answered "Yes", and stated that he did not recall Mr. McIlraith's having given any indication that he was not in accord with such a policy (Vol. 84, pp. 13756-7). He was then asked whether he discussed this matter with Mr. Goyer, namely, the policy referred to in the three-page policy memorandum. Mr. Higgitt stated:

...I must frame my answer to this specific memorandum as such. It was not necessarily discussed, but the principle involved and the fact that our members were required... to put themselves at risk in the carrying out of their obligations and their duties. This was discussed... with all ministers that I served under.

(Vol. 84, p. 13757.)

159. When asked about "the intention... that the Force would stand behind the members if they were acting in accordance with the orders and policy of their senior officers", Mr. Higgitt answered that it

was discussed in the context that very often we are trying to get some legislative support for it.

(Vol. 84, p. 13758.)

160. Mr. Higgitt was then asked whether he discussed "the same problem and the resolution so far as the members are concerned" with Mr. Allmand. He replied: "Yes, there is no doubt in my mind of that" (Vol. 84, p. 13758).

161. Mr. Higgitt's evidence on this issue is not however, entirely consistent. Notwithstanding his prior testimony, when cross-examined further on this subject Mr. Higgitt stated at one point that he did not think that he passed on to "the Ministers" the information as to the "procedures" to apply (Vol. 110, p. 16970). Still later in his evidence he stated expressly:

There was no question but that very senior people in government and including Ministers knew that this problem existed.

(Vol. 110, p. 16986.)

162. Mr. Higgitt in this regard was referring to the procedure whereby "the Force would protect its members" depending on the facts of the particular activity concerned (Vol. 110, p. 16987). When asked to which Ministers he had described this "procedure", he replied that "... it wasn't something that even had to be discussed" (Vol. 110, p. 16989) because it was such an obvious and simple procedure. His evidence was marked by further inconsistencies as he then stated that he was not sure that he had discussed it with "the Minister" but that "... in the course of general discussions this kind of thing would have been probably mentioned" and that he was "sure" that it was part of their general discussions (Vol. 110, p. 16990).

163. According to Mr. Higgitt, he "must have" discussed the matter with the Solicitor General to whom he was responsible (Vol. 110, p. 16992). "Logic"

dictated that he "undoubtedly" did but he had no "absolute recollection of it" (Vol. 110, p. 16994).

164. In the light of this testimony Mr. Higgitt was asked specifically to identify the Solicitors General with whom he had discussed this policy or procedure. In reply to this questioning he stated on the one hand, that he couldn't "really answer that question" but nevertheless "I certainly think it would have been with Mr. McIlraith" (Vol. 110, pp. 16994-5).

165. In support of this assertion, and despite his admission that he had no precise recollection of such a discussion with Mr. McIlraith, Mr. Higgitt stated that it was during Mr. McIlraith's tenure as Solicitor General that the general question of the extent to which members of the Force would be required to transgress the law in order to carry out their functions was being considered by various responsible government committees. Based on this fact, Mr. Higgitt told us that he thought that the protection or support policy of the Force was discussed with Mr. McIlraith, but he was not sure (Vol. 110, pp. 16995-6).

166. In view of the inconsistencies in Mr. Higgitt's evidence with respect to this matter, we are of the view that it cannot reasonably be concluded that, as originally asserted by him, he did in fact discuss this issue with Mr. Goyer and Mr. Allmand. However, as alluded to by Mr. Higgitt, it is correct that the Law and Order Documents were generated during the tenure of Mr. McIlraith and were before various governmental committees in the fall of 1970 (most notably, the C.C.P.P. at its meetings of November 24, 1970 and December 1, 1970 respectively, and the Special Committee of the Security Panel at its meeting of November 27, 1970).

167. At most, then, it could only be suggested that he discussed the matters with Mr. McIlraith. It is submitted, however, that it is unreasonable to draw this inference inasmuch as Mr. Higgitt's overall evidence on this particular issue is inconsistent and contradictory. At the same time, however, the minutes of the C.C.P.P. meeting of December 1, 1970 and the R.C.M. Police Strategy Report as before the Special Committee of the Security Panel on November 27, 1970 do support the view that infiltration problems had been brought to the attention of government officials and that "guidelines" were being sought. In this regard it should be remembered that although Mr. McIlraith was not present at the C.C.P.P. meeting of December 1, 1970 nor at the Security Panel meeting of November 27, 1970, he had been forwarded a copy of both the Maxwell Memorandum and the "R.C.M.P. Strategy Paper". In addition, his immediate subordinate, Mr. Ernest Côté, was present at the November 27 meeting as were other senior officials of government.

168. Assuming, however, that the specific inference is drawn by us that the "policy" or "procedure" was discussed with Mr. McIlraith, the question arises as to what matters, specifically, were discussed with Mr. McIlraith and what "sensitive or secret operations" were referred to in such discussions. In this regard Mr. Higgitt testified that the matter which he logically felt had been discussed was the "procedure" followed when members of the R.C.M.P. put themselves "at risk" in the course of their duties. Mr. Higgitt did not testify

that "activities not authorized or provided for by law" or indeed, unlawful or illegal activities, were so discussed.

169. It is our opinion, therefore, that a discussion of the problem faced by members of the R.C.M.P. when they place themselves at risk, cannot in itself properly be regarded as support for the inference that a Minister or Ministers were informed that a Force policy or procedure existed whereby activities not authorized or provided for by law, or activities giving rise to legal concerns, were sanctioned or approved by the Force whether through an existing protection or support policy or otherwise.

C. WHAT, IF ANYTHING, DID MR. STARNES TELL MR. McILRAITH ON NOVEMBER 24, 1970?

170. A further meeting, however, allegedly arising on November 24, 1970, or thereafter and prior to the C.C.P.P. meeting on December 1, 1970, must be considered. Introduced in evidence before us was a document, dated November 26, 1970, by Mr. John Starnes (Ex. M-36, Tab 11). That document records a discussion allegedly held between Mr. Starnes and his Minister at the time, Mr. McIlraith, on November 24, 1970. The document, apparently a personal note recorded by Mr. Starnes, reads as follows:

On November 24, 1970, George McIlraith [sic], the Solicitor General, raised with me the question of what should be done to eliminate inherent contradiction in the existing Security Service which centres around the question of the commission of crime in the national interest.

I had pointed out that this had been the subject of discussion for some time; especially the question of the protection, if any, which can be provided members of the Security Service or agents of the Security Service who may on occasion have to break the law. As the Minister was aware, the theory being advanced in some quarters was that breaking the law might somehow be easier for a civilian service than for the R.C.M.P. I mentioned to the Minister that the R.C.M.P. had in fact been carrying out illegal activities for two decades and that this point had been made in various discussions.

The Minister had remarked that in his view, in the public mind, it would probably be more acceptable for the R.C.M.P. to commit crime in the national interest than for this to be done by some civilian body.

171. Mr. Starnes in his evidence affirmed that this discussion with Mr. McIlraith had taken place. He stated further that, although he had no actual memory of the words used during the discussion, he believed that the memorandum prepared by him in substance set out the discussion which had taken place. With respect to the reference in the memorandum to "illegal activities", Mr. Starnes testified that he did not recollect Mr. McIlraith inquiring what activities Mr. Starnes was referring to, nor did he himself provide to Mr. McIlraith a list of such activities.

172. Mr. McIlraith, in turn, denied in his evidence before this Commission that this discussion took place on November 24, 1970 or indeed that such a discussion took place between Mr. Starnes and himself at any time (Vol. 118, pp. 18429-40).

173. When questioned before the Commission with respect to Mr. Starnes' document of November 26, 1970 and its contents, Mr. McIlraith expressly stated that "There was no such meeting with Mr. Starnes" (Vol. 118, pp. 18431 and 18438). When asked whether Mr. Starnes had raised with him the question "... what should be done to eliminate inherent contradiction in the existing Security Service which turns around the question of the commission of crime in the national interest?", Mr. McIlraith replied:

No sir. If he raised ... well, I do not believe that you can ... you cannot have commission of crime in the national interest. There just is no such thing. Our whole system is to run a system of the operation of a democratic government under the law.

(Vol. 118, p. 18431.)

174. He was asked whether Mr. Starnes had said "... that the R.C.M.P., in fact had been carrying out illegal activities for two decades and that this point had been made in various discussions", and he replied "He did not..." (Vol. 118, pp. 18433-34).

175. In concluding this portion of the examination, Commission Counsel enquired whether the contents of Mr. Starnes' document were false and the witness responded:

No I don't say that at all. I say the contents of the document, if they ever took place, do not relate to me. There is a big difference. Mr. Starnes is not a man who is going to do a false document. That just isn't good enough. That is not right at all ... I am saying it does not record any meeting with George McIlraith, the Solicitor General.

(Vol. 118, pp. 18438-39.)

176. Mr. McIlraith testified that the phrase "commission of crime in the national interest", if used by Starnes in such a discussion, would have caused "... a flare up right away" (Vol. 119, p. 18638). He testified that he has no recollection of this two-page document entitled "Various Questions Raised by Law and Order Paper". He further testified that he has a good recollection of the C.C.P.P. meeting of November 24, 1970, but cannot recall whether the two-page list of questions was annexed to the Maxwell Memorandum for the purpose of discussion at the meeting (Vol. 120, p. 18691). If it was, he testified, "then I still think it was not discussed or referred to at all" (Vol. 118, pp. 18416-17 and 18442). He told us that, if he had read the two-page series of questions, and question seven in particular — which contained language identical to that found in Mr. Starnes' memorandum, namely "the commission of crime in the national interest" — he would have been "very sensitive on that suggestion" and would have had the same reason to have "a flare-up" (Vol. 120, p. 18692).

177. In light of the conflicting evidence of Mr. Starnes and Mr. McIlraith regarding the subject of this discussion, it is relevant to note some of the evidence of Mr. Ernest Côté, Deputy Solicitor General during the period of Mr. McIlraith's and Mr. Goyer's respective tenures as Solicitor General.

178. Following the creation of the I.C.L.O. consequent upon the meeting of the C.C.P.P. held on May 5, 1970, Mr. Côté became the representative of the

Department of the Solicitor General on the I.C.L.O. (Vol. 309, p. 300876). Mr. Côté testified that on one occasion Mr. Starnes, as Director General of the Security Service, was in Mr. Côté's office and:

... he was bothered about certain acts, were close to the line, and there may have been trespassing, which is a civil affair, in eavesdropping, or other matters, close to the line, which he was concerned about.

(Vol. 307, p. 300770.)

179. By "close to the line" Mr. Côté stated that he meant activities bordering on the limits of legality. Mr. Côté further stated that although he did not recall when this discussion with Mr. Starnes took place, he did recall vividly that Mr. Starnes had been in his office waiting to see the Minister, and that Mr. Côté had told Mr. Starnes, with respect to the concern he expressed, that Mr. Starnes should talk to the Minister about it "... that it was a matter between the Minister and Mr. Starnes" (Vol. 307, pp. 300770-2).

180. Mr. Starnes, during this discussion with Mr. Côté was:

... bothered about the position of members of the Force on the security side who may have to act very close to the line of the law and what is to be done with these people, how to protect them.

(Vol. 307, p. 300772.)

181. Mr. Côté stated that he did not have any other conversation with Mr. Starnes of a like nature, nor was the matter again raised with him by Mr. Starnes or by Mr. McIlraith (Vol. 307, p. 300773).

182. Mr. Côté testified that he did not have any recollection as to whether Mr. Starnes raised with him at this time any specific activities with which he was concerned (Vol. 307, pp. 300770-2).

183. Still later in his evidence, however, Mr. Côté stated, with reference to electronic eavesdropping, that he recalled this matter being raised with him by Mr. Starnes during this discussion (Vol. 308, pp. 300809-10). Further, he testified that the question of intelligence probes being made by the Security Service in the course of their operations "may also" have been a matter discussed between him and Mr. Starnes on the occasion of this discussion (Vol. 308, pp. 300840-2). Similarly, mail opening by the Security Service "may have" been a matter raised by Mr. Starnes at this time, although Mr. Côté did not recall one way or another (Vol. 308, p. 300853). Perhaps more significantly, the problems experienced by human sources in penetrating "violence-prone groups" may also have been a matter raised by Mr. Starnes with Mr. Côté during this discussion. Mr. Côté did not however know whether or not Mr. Starnes had raised this issue with Mr. McIlraith (Vol. 309, p. 300886).

184. Mr. Côté, when questioned as to when this discussion took place with Mr. Starnes, was unable to recall a specific date or indeed, whether it had occurred during the tenure of Mr. McIlraith or Mr. Goyer (Vol. 307, p. 300771; Vol. 309, p. 300888). From time to time during his evidence in this regard, however, Mr. Côté specifically referred to Mr. McIlraith as the Minister concerned (Vol. 307, p. 300773; Vol. 307, pp. 300886-8).

Conclusions

185. Obviously we are facing here a direct contradiction in the evidence as to what took place between the only two participants, Mr. McIlraith and Mr. Starnes. Were there no corroborative evidence, the issue would have to be resolved on a straight credibility basis.

186. Fortunately, there are some facts of corroborative value which, coupled with the oral testimony of Mr. Starnes, lead us to accept his version of the facts. They are:

- (a) The striking similarity in the phraseology used by Mr. Starnes in his November 26 memo concerning his November 24 meeting with Mr. McIlraith, at the November 27 meeting of the Security Panel and again on December 1 at the Cabinet Committee on Priorities and Planning.
- (b) The similarity of phraseology in Question No. 7 attached to the Maxwell memorandum and the language attributed to Mr. McIlraith by Mr. Starnes in his November 26 memorandum, concerning the November 24 conversation.
- (c) The fact that the issue was actually on the agenda for the meeting of the Cabinet Committee on Priorities and Planning on November 24, as Question No. 7, attached to the Maxwell memorandum, which had been circulated for the meeting of that day.
- (d) The Côté-Starnes conversation at Mr. Côté's office.

187. We now discuss briefly how we perceive these facts to be of corroborative value.

- (a) The striking similarity in the phraseology used by Mr. Starnes on November 24, November 27 and again on December 1

188. There is little need to do more here than quote how the message was expressed on those three dates.

189. In his memorandum of November 26, 1970, covering his meeting of November 24 with Mr. McIlraith, Mr. Starnes wrote:

...I mentioned to the Minister that the RCMP had in fact been carrying out illegal activities for two decades and that this point had been made in various discussions. . .

190. At the meeting of the Security Panel held on November 27, 1970, and the meeting of the Cabinet Committee on Priorities and Planning held on December 1, 1970, the identical message to the one Mr. Starnes contends he had conveyed to Mr. McIlraith on November 24, 1970, i.e. 3 and 6 days earlier, respectively, was voiced by Mr. Starnes. The handwritten notes of the recording secretaries at each of those meetings, Mr. Beavis and Mr. Trudel, respectively, not only relate to the same issue but also record much the same wording. The notes of Mr. Trudel read:

misunderstanding of contradiction
— has been doing S & I illegal
things for 20 years but never
caught
— no way of escaping these things.

The notes of Mr. Beavis read:

St — crim acts — for 20 yrs. & will get caught

Ch — ensure good disc in CC — *frank* — & make clear what Hig meant re crime.

We believe that the striking similarity between Mr. Starnes' language in his memorandum of November 26 and Mr. Trudel's and Mr. Beavis' notes covering Mr. Starnes' statements on November 27 and December 1, are corroborative of the likelihood that Mr. Starnes spoke to Mr. McIlraith on November 24 in the language similar to what he recorded in his memorandum very shortly after the event.

- (b) The similarity between Question No. 7 attached to the Maxwell memorandum and the language used in the November 26 Starnes memorandum

191. It will be recalled that the Maxwell memorandum was placed on the agenda of the meeting of the Cabinet Committee on Priorities and Planning of November 24, 1970, that being the same day that Mr. Starnes is supposed to have spoken to Mr. McIlraith. Question No. 7 reads as follows:

What should be done to eliminate inherent contradiction in existing security service which turns around the question of crime in the national interest?

192. In his memorandum Mr. Starnes writes that Mr. McIlraith had, in conversation, posed the following question to him:

The Solicitor General raised with me the question of what should be done to eliminate inherent contradiction in the existing security service which centres around the question of the commission of crime in the national interest.

193. Obviously, the language attributed to Mr. McIlraith borrows the phraseology of Question No. 7. The similarity between the two texts is such that one could well conclude that both Mr. Starnes and Mr. McIlraith had read from the same pages.

- (c) Cabinet Committee on Priorities and Planning — November 24 and the Maxwell memorandum

194. Further corroboration of the likelihood that this conversation between Mr. McIlraith and Mr. Starnes took place on November 24, 1970, as Mr. Starnes contends, stems from the fact that, as already noted, it was on that same day that this problem was scheduled for discussion. That would have been a likely time for Mr. McIlraith to speak to Mr. Starnes about the subject, in preparation for the meeting.

195. November 24, 1970 was the day when this problem was to be raised at the meeting of the Cabinet Committee on Priorities and Planning. The Maxwell memorandum had been issued in advance and distributed for the briefing of those attending this meeting. Amongst those persons was Mr. McIlraith.

CONTINUED

1 OF 6

(d) The Côté-Starnes conversation at Mr. Côté's office

196. The facts relating to this event are set forth in paragraphs 177 to 184 inclusive. On the strength of those facts, we conclude that there was an encounter between Mr. Côté and Mr. Starnes at a time when Mr. McIlraith was the Minister. The problem raised by Mr. Starnes on the occasion of the meeting with his minister was the one that Mr. Starnes' note says he raised with Mr. McIlraith on November 24. We believe that Mr. Côté did advise Mr. Starnes to discuss this matter with the Minister.

Conclusion

197. We therefore conclude that all these factors, put together, give credence to the contents of Mr. Starnes' memorandum. We believe that a conversation between Mr. McIlraith and Mr. Starnes did in fact take place as set out in that memorandum. Mr. McIlraith's firm denial of such an encounter that day on that subject is a result, we believe, of an inability to remember a brief event that took place a decade ago.

A minority report by the Chairman as to what Mr. Starnes told Mr. McIlraith on November 24, 1970

198. I am not prepared to conclude that Mr. Starnes told Mr. McIlraith on November 24 what is recorded in the memorandum in Mr. Starnes' writing bearing a November 26 date. We have Mr. McIlraith's denial that Mr. Starnes told him that the R.C.M.P. had been carrying out illegal activities for two decades and that this point had been made in various discussions. As against this denial under oath what is there?

199. There is, first, Mr. Starnes' memorandum, but Mr. Starnes has no memory of what words he used. While Mr. Starnes may have sincerely attempted on November 26 to record a conversation he had had with Mr. McIlraith, it does not follow that he did so accurately. This is not like Mr. Beavis' notes of the meeting of November 27 or Mr. Trudel's notes of the meeting of December 1. In those instances the reliability of the notes is enhanced by the fact that they were made by a disinterested third party who owed a duty to his employer to take notes contemporaneously as to what was said. In this case Mr. Starnes was not disinterested, he owed no duty to anyone to record what was said, and he did not make his notes contemporaneously or even the same day.

200. Apart from Mr. Starnes' note, there is only circumstantial evidence, namely the four items enumerated in the report of the majority. The existence of "Question No. 7", attached to the Maxwell memorandum at the meeting of November 24, and the presence of that subject-matter on the agenda of the November 24 meeting, are evidence that a conversation took place, and that the conversation dealt with the issue that was raised in Question No. 7 that was attached to the Maxwell memorandum — the question of the commission of crime in the national interest. However, it is not evidence that during the discussion Mr. Starnes spoke of past illegal activities. The issue that was raised in the Maxwell memorandum related to prospective matters, not past acts. It concerned the difficulties faced (as Mr. Maxwell saw it) by a Security Service in doing its job if it was required not to commit crimes. It did not report that

the Security Service had been committing crimes in the national interest. It did not even report that the Security Service had been carrying out illegal activities in the national interest. Therefore Question No. 7 and the presence of this item on the agenda of the November 24 meeting are not evidence that on November 26 Mr. Starnes told Mr. McIlraith something very different — viz., that the R.C.M.P. had been carrying out illegal activities for two decades.

201. Nor, in my opinion, does the evidence of Mr. Côté tend to prove that Mr. Starnes spoke those words to Mr. McIlraith. There is nothing significant in Mr. Côté's testimony on this matter, other than that Mr. Starnes told him at some time that he was bothered about certain acts which "were close to the line", by which he meant "bordering on the limits of legality". That is not the same as being bothered about "illegal activities". It is further to be noted that Mr. Côté was not able to say when Mr. Starnes had spoken to him. Without there being a date or even a rough time attached to Mr. Côté's evidence, it lacks probative value as to whether the same sort of subject matter was discussed by Mr. Starnes with Mr. McIlraith on November 24. Mr. Côté recalls electronic eavesdropping being referred to by Mr. Starnes; there was nothing illegal about electronic eavesdropping *per se* at the time. As for intelligence probes, Mr. Côté can say no more than that they "may" have been discussed. Mr. Côté put them on the same plane as mail opening, which he says "may have" been raised by Mr. Starnes; but it is unlikely that Mr. Starnes ever raised the opening of mail with Mr. Côté, in the light of our conclusion, in Part III, Chapter 3, that while he was Director General Mr. Starnes did not know that mail was being opened or that an operational policy envisaged the opening of mail. Finally, the penetration problems experienced by human sources in penetrating violence-prone groups, according to Mr. Côté, "could well have been" raised by Mr. Starnes; but we have seen that, even if this matter was raised, the work Mr. Starnes had been doing on this problem by November 24 had been entirely in regard to possible future offences by sources attempting to penetrate such groups, and he did not have in mind any offences that had been committed. My conclusion, therefore, is that Mr. Côté's evidence is not in the least corroborative of Mr. Starnes having said to Mr. McIlraith on November 24 that the R.C.M.P. had in fact been carrying out illegal activities for two decades.

202. The final argument of the majority, which is the first in their enumeration of what they consider to be corroborative facts, is what they describe as "the striking similarity in the phraseology used by Mr. Starnes in his November 26 memo concerning his November 24 meeting with Mr. McIlraith, at the November 27 meeting of the Security Panel and again on December 1 at the Cabinet Committee on Priorities and Planning". However, I consider that the similarity does not afford adequate corroboration of the accuracy of Mr. Starnes' memo as far as the vital sentence is concerned. At most, I think, it is evidence that on November 26 these thoughts were in Mr. Starnes' mind. He may well have been preparing himself mentally to make his disclosure to the Security Panel the next day. In preparing the November 26 memo he may have imagined that the words he planned to use the next day had been used by him two days earlier. We do not know, and cannot know, for Mr. Starnes has no

memory of what he said to Mr. McIlraith, or of what the circumstances of the conversation with him were, or of what Mr. McIlraith's reaction was, and we are faced with the inscrutable face of the memo, which cannot be cross-examined as to its accuracy or reliability or even as to when it came into existence or why.

203. For all these reasons, I am not prepared to conclude, and I do not find, that Mr. Starnes, on or about November 24, 1970, told Mr. McIlraith that the R.C.M.P. had in fact been carrying out illegal activities for two decades.

APPENDIX TO PART II

204. Would the notes made by Mr. Trudel at the meeting of the Cabinet Committee on Priorities and Planning on December 1, 1970, be admissible in a court of law? In a sense this question is not directly relevant to our proceedings, for we are a Commission of Inquiry, not a court of law, and a Commission of Inquiry is not bound by the rules of evidence that would be applied by a court in a trial. On the other hand, if it were the case that the notes would not be admissible in a court of law, we would want to examine the reasons for inadmissibility and decide whether those reasons, or the rationale constituting the root of inadmissibility, ought nevertheless to be applied by us even though we are not a court of law. It is for that reason that we shall examine this question.

205. As the author of the notes does not have his memory refreshed by them and cannot testify on the basis of his recollection, the notes would be approached by a court just as if the author were not a witness. They would be hearsay evidence of what was said at the meeting. Nevertheless, counsel for Mr. Starnes has submitted to us that the notes would be admissible in a court of law, and are equally admissible before a commission of inquiry, on two grounds. The first is that they are admissible by virtue of the provisions of section 30 of the Canada Evidence Act.⁶ That section applies to any "legal proceeding", which it defines as meaning

any civil or criminal proceeding or inquiry in which evidence is given, and includes an arbitration.

We think a commission of inquiry comes within that meaning. Subsection (1) of the section states:

Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding upon production of the record.

The word "business" is defined as including

any activity or operation carried on or performed in Canada or elsewhere by any government, by any department, branch, board, commission or agency of any government. . . or by any other body or authority performing a function of government.

We think that the Governor in Council falls within the definition of "government", that one of its meetings is an "activity" carried on by it, and that Mr. Trudel's notes are a record made in its usual and ordinary course of business. Would "oral evidence in respect of" the matter covered by Mr. Trudel's notes

⁶ R.S.C. 1970, ch. E-10.

"be admissible in a legal proceeding"? Those words must be read in conjunction with the provisions in subsection (i0) that

Nothing in this section renders admissible in evidence in any legal proceeding

(a) such part of any record as is proved to be

...

(iii) a record in respect of the production of which any privilege exists and is claimed...

(b) any record the production of which would be contrary to public policy:...

There is no doubt that, in a sense, a privilege has been claimed, but it is not a privilege from production of the notes to us, but an assertion that the contents of the notes ought not to be reported on to the Governor in Council. Therefore we do not think that it can truly be said that a "privilege" from the admission of the evidence before us "is claimed". Would the production of the record be contrary to public policy? Again, the production of the document before us at a hearing at which evidence was given was not objected to, and it was in fact produced. Consequently, we think that it cannot now be argued that they are not admissible before us. Indeed, we note that that has not been argued; the submission is that the notes would not be admitted into evidence in a court of law. That, of course, would depend on such matters as whether there had been compliance with the requirements of section 30(7), which requires at least seven days' notice of the intention to produce the document "unless the court orders otherwise". Another consideration would be whether, in the context of the nature of the proceeding in court, an objection based on privilege or public policy would succeed. As that cannot, in the abstract, be the subject of anything but speculation, we cannot say whether the notes would be admissible in a court of law or not.

208. Counsel for Mr. Starnes also argued that the notes are admissible under the principle of *Arès v. Venner*.⁷ There, speaking of facts relating to the condition of a hospital patient, as recorded in notes made by a nurse, Mr. Justice Hall, delivering the judgment of the Supreme Court of Canada, said:

Hospital records, including nurses' notes, made contemporaneously by someone having a personal knowledge of the matters then being recorded and under a duty to make the entry or record should be received in evidence as *prima facie* proof of the facts stated therein. This should, in no way, preclude a party wishing to challenge the accuracy of the records or entries from doing so...⁸

The rationale of the decision is not limited to hospital records, as is made clear by the variety of facts of the cases cited with approval by the court. In one of

⁷ [1970] S.C.R. 608; 14 D.L.R. (3d) 4; 12 C.R.N.S. 349; 73 W.W.R. 347. The effect of *Arès v. Venner* is thoroughly canvassed by J.D. Ewart, "Documentary Evidence: The Admissibility at Common Law of Records Made Pursuant to a Business Duty", (1981) 59 Can. Bar Rev. 52.

⁸ [1970] S.C.R. 608 at p. 626.

those cases, *Omand v. Alberta Milling Company*,⁹ Mr. Justice Stuart, of the Appellate Division of the Supreme Court of Alberta, was considering the admissibility of written reports made by inspectors, as to the quantity and quality of flour purchased. He held that the records were admissible "as proof of the facts stated therein". One of the grounds on which he so held was stated as follows:

Then there is the circumstantial guarantee of trustworthiness arising from (1) complete disinterestedness, (2) duty to test, (3) duty to record the test at the time, this duty being to superior authorities who would be liable to punish or reprimand for failure to perform it.¹⁰

Applying the principles stated by Mr. Justice Hall and Mr. Justice Stuart to Mr. Trudel's notes, we conclude that Mr. Trudel, a completely disinterested person, had a personal knowledge of the matters then being recorded (i.e. he heard the words spoken),¹¹ and he had a duty to make the record (i.e. his notes of what was said at the meeting).¹² Therefore, applying that principle, the notes (apart from any objection based on privilege or public interest) would be admissible in a court of law as *prima facie* evidence that the words written in the notes were spoken by the person named in the notes.

207. It has been contended by counsel for the government that section 30 of the Canada Evidence Act and the decision in *Arès v. Venner* "deal with records" in which factual data are recorded", and that such records are "readily distinguishable from the recording of a discussion where the completeness is essential in order to give context and accuracy". The submission continued:

In the case of VC-1, it has been demonstrated that the notes did not purport to be a verbatim recording of the conversation and, in fact, are not complete. It is also, in our submission, incorrect to equate the nurses' duty to record with that of the persons who took notes at the December 1st, 1970 meeting. A Court reporter or official stenographer would be the person who might be considered to be in a position comparable to that of the nurse in the *Ares* case. The notetakers neither had the qualifications nor carried out the functions of a Court reporter or official stenographer. In our submission, a Court of law would not accept, as evidence, a Court reporter's or official stenographer's incomplete transcript of a discussion.

⁹ [1922] 3 W.W.R. 412, 69 D.L.R. 6.

¹⁰ [1922] 3 W.W.R. 412 at p. 413.

¹¹ The duty was to listen and record. There is no logical difference between such a case and that found in *Arès v. Venner*, where there was a duty to look and record. In *Arès v. Venner*, the notes were admitted as evidence of the state of the body looked at. In the present case the notes are admitted as evidence of what words were spoken. Even if the notes in the present case could not be admissible as evidence of the truth of the words spoken, they are admissible as evidence that the words were spoken. See *Setak Computers v. Burroughs* (1977) 15 O.R. (2d) 750 at p. 755 (per Mr. Justice Griffiths, Ont. High Court).

¹² Unlike the notes made in *Regina v. Laverty* (1979) 9 C.R. (3d) 288 (Ont. C.A.). See the discussion in Ewart's article, *supra*, at p. 66, as to the importance of the notes being made in the fulfillment of a duty, or as a necessary step in that fulfillment.

We do not agree with that submission. The nurses' notes in *Arès v. Venner* did not purport to set forth all the circumstances of the observations made of the patient's condition. While the notes stated the colour and the degree of warmth of the patient's toes, which were a vital issue in the lawsuit, the notes did not indicate the lighting conditions, or whether there had been any discussion of the condition of the patient at the time the notes were made, or whether the observations were made in haste or with care, and so on. A limitation on admissibility, of the nature suggested by counsel for the government, is not found in the common law exception to the hearsay rule which admits evidence of declarations made by a person, since deceased, who owed a duty to do an act and to record it — the exception which was applied and extended (to circumstances in which the person making the record is not dead) by *Arès v. Venner*. While the absence of completeness may be a reason for scrutinizing the evidence of incomplete notes of what is said at a meeting — notes made by a person doing a duty to listen to what was said and to make a record of what was said — with some care, that, in our opinion, would be regarded by a court of law as going to the weight to be attached to the evidence, rather than to its admissibility.

208. The first argument raised by counsel for the government has been approached by us so far on the basis of what would be admissible in a court of law. However, we are not a court of law. We are a Commission of Inquiry, and we are not bound by the rules of evidence as they would be applied in a court of law. Indeed, counsel for the government, in his written submission, said: "This being a Royal Commission, we, at no time. . . suggested that VC-1 should not be considered by reason of the hearsay rule". Nevertheless, it remains a fact that we would not permit evidence to influence our conclusions if it lacked probative value or reliability. We consider that Mr. Trudel's notes, being made contemporaneously by a disinterested person with a duty to record what he heard, were more likely than not to be reliable and accurate, and that they consequently possess substantial probative value as to whether the words in question were spoken by Mr. Starnes. In arriving at this conclusion we derive support from the evidence of Mr. Butler, who worked with Mr. Trudel in circumstances that would have enabled him to judge Mr. Trudel's aptitude for accuracy, that "Mr. Trudel is a very careful and precise man". Mr. Trudel himself told us: "...I took down as best I could the discussion that took place". He also testified that he would try to record, as best he could, what people said, not by way of paraphrase.

209. The reliability of Mr. Trudel's notes is enhanced by the fact that a different disinterested person, Mr. Beavis, who owed an identical duty, had made contemporaneous notes of another meeting three days earlier, on November 27, in which he recorded Mr. Starnes as saying almost exactly the same thing. Accepting the possibility of inaccuracy by both men on the two occasions depends on a willingness to accept the probability of coincidence, to which, in the circumstances, we find ourselves unable to subscribe.

210. The second point made by counsel for the government is that Mr. Trudel's notes are not reliable. For the reasons just given, we think, quite to the contrary, that the evidence justifies the inference that they are reliable.

211. There is an additional legal issue to be considered. Even if the notes are reliable and would be evidence of what was said in normal circumstances, counsel for the government has made written representations that the evidence should not, in the present circumstances, be relied upon by us unless it

is sufficiently clear and is of adequate weight to seek a departure from the application of the constitutional privilege

but that, if there is such a "departure", the "information gleaned" should be "used with the least encroachment upon the principle of confidentiality". The "constitutional privilege" is described by counsel for the government as follows:

Any consideration of this matter must take account of the traditional secrecy attaching to the proceedings of the cabinet and its committees, and the privilege from disclosure that minutes of proceedings and discussions at these meetings enjoy. The confidentiality of discussions in the cabinet is a matter of great importance. The principle is one of the cornerstones of our system of government. The uninhibited, candid, and spontaneous exchanges that form the strength of the cabinet system and are essential to it depend upon the confidentiality of the cabinet's proceedings. The roving nature of discussion in the cabinet, the freedom to think out-loud, to speculate conceptually, to consider the extremities of problems and solutions as a means of identifying acceptable compromises, are the essence of collective decision-making among responsible ministers. To do so effectively ministers must feel unfettered in the privacy of their open expression of thought, and they must be confident that officials will not be inhibited from advising them as fully and as straight-forwardly as possible. Any action that undermines such privacy and confidence can only damage the delicately balanced mechanism that makes possible the collective character that is the genius of our system of responsible democratic government.

212. When we delivered "Reasons for Decision" on October 13, 1978 — which are reproduced as Appendix "F" to our Second Report — we quoted extensively from judicial decisions which have recognized the public interest that may result in the protection from disclosure or publication of the proceedings of the cabinet and its committees. For example, we quoted the following passage from the judgment of Lord Widgery, C.J., in *Attorney General v. Jonathan Cape Ltd.*:¹³

It has always been assumed by lawyers and, I suspect, by politicians, and the Civil Service, that Cabinet proceedings and Cabinet papers are secret, and cannot be publicly disclosed until they have passed into history. It is quite clear that no court will compel the production of Cabinet papers in the course of discovery in an action, and the Attorney General contends that not only will the court refuse to compel the production of such matters, but it will go further and positively forbid the disclosure of such papers and proceedings if publication will be contrary to the public interest.

The basis of this contention is the confidential character of these papers and proceedings, derived from the convention of joint Cabinet responsibility whereby any policy decision reached by the Cabinet has to be supported thereafter by all members of the Cabinet whether they approve of it or not,

¹³ [1975] 1 Q.B. 752.

unless they feel compelled to resign. It is contended that Cabinet decisions and papers are confidential for a period to the extent at least that they must not be referred to outside the Cabinet in such a way as to disclose the attitude of individual Ministers in the argument which preceded the decision. Thus, there may be no objection to a Minister disclosing (or leaking, as it was called) the fact that a Cabinet meeting has taken place, or, indeed, the decision taken, so long as the individual views of Ministers are not identified.

However, it is important to note that Lord Widgery did not regard the protection from publication which the court would extend as unlimited. Thus, he said:

... it must be for the court in every case to be satisfied that the public interest is involved, and that, after balancing all the factors which tell for or against publication, to decide whether suppression is necessary.

Again, he said:

... The Cabinet is at the very centre of national affairs, and must be in possession at all times of information which is secret or confidential. Secrets relating to national security may require to be preserved indefinitely. Secrets relating to new taxation proposals may be of the highest importance until Budget day, but public knowledge thereafter. To leak a Cabinet decision a day or so before it is officially announced is an accepted exercise in public relations, but to identify the ministers who voted one way or another is objectionable because it undermines the doctrine of joint responsibility.

It is evident that there cannot be a single rule governing the publication of such a variety of matters. In these actions we are concerned with the publication of diaries at a time when 11 years have expired since the first recorded events. The Attorney General must show (a) that such publication would be a breach of confidence; (b) that the public interest requires that the publication be restrained, and (c) that there are no other facts of the public interest contradictory of and more compelling than that relied upon. Moreover, the court, when asked to restrain such a publication, must closely examine the extent to which relief is necessary to ensure that restrictions are not imposed beyond the strict requirements of public need.

Applying those principles to the present case, what do we find? In my judgment, the Attorney General has made out his claim that the expression of individual opinions by Cabinet Ministers in the course of Cabinet discussions are matters of confidence, the publication of which can be restrained by the court when this is clearly necessary in the public interest. The maintenance of the doctrine of joint responsibility within the Cabinet is in the public interest, and the application of that doctrine might be prejudiced by premature disclosure of the views of individual Ministers.

There must, however, be a limit in time after which the confidential character of the information, and the duty of the court to restrain publication, will lapse.

213. In other "Reasons for Decision" which we delivered on February 23, 1979, and are reproduced as Appendix "Z" to our Second Report, we referred

to a number of considerations that might be pertinent to a decision as to the publication of documents received *in camera*. One of them was as follows:

(e) The interest of persons who have already been witnesses before the Commission, in knowing of documents containing evidence of the conduct of senior officials of the R.C.M.P. and of persons in high levels of government, which may have a bearing on whether the conduct of those witnesses was authorized expressly or by implication, or at least tolerated or condoned.

In those reasons we made the following additional observations which are relevant to the issue now being considered:

... the evidence given in public by Mr. Higgitt included statements reflecting on the conduct of senior officials and Cabinet Ministers, and an indication that certain specified documents supported adverse inferences against such persons. A pertinent consideration in respect to some of the documents under consideration is that those persons would have no way to meet that evidence in public without their counsel being able to refer to the actual content of such documents in public. Not to allow them to do so would expose the Commission to the risk of being an instrument of injustice and unfairness, a consideration far more important in the generally accepted scale of values than such possibility as there may be that disclosure in these instances would adversely affect the efficiency of the governmental process.

Of considerable importance is the evidence of Mr. Starnes generally as to the extent to which senior officials and cabinet ministers knew that members or agents of the R.C.M.P. had committed offences. It is true that all of Mr. Starnes' evidence in this regard has been given *in camera*. Not to disclose publicly the documents to which Mr. Starnes refers in his *in camera* evidence would have the result that in effect none of his testimony on this vital issue could be made public — whether his testimony upon being examined by counsel for the Commission or that upon being cross-examined. In other words, his testimony on this issue would remain behind closed doors. Yet it is obvious to all that, as Director General of the Security Service, he had access in writing and in person to senior officials and to Cabinet Ministers. To keep his testimony, and the documentary passages which form such an important part of his testimony, from the public eye would not engender "confidence that everything possible has been done for the purpose of arriving at the truth".

Another pertinent consideration is that the documents to be considered are now at least eight years old. In *Sankey v. Whitlam*, Mason J. said: [here we quoted the passage which we have already quoted earlier in this Part]

214. Counsel for the government has questioned whether Mr. Beavis' notes of the meeting of the Security Panel on November 27, 1970, would be admissible in a court of law. The short answers to this depends not on section 30 of the Canada Evidence Act or the case of *Arès v. Venner*, but on the earlier common law "regular entries" exception to the hearsay rule. As has recently been said in an article on the subject:

... the common law evolved seven strict requirements for admissibility under this exception. To be admissible, the record must have been (i) an

original entry, (ii) made contemporaneously with the event recorded, (iii) in the routine, (iv) of business, (v) by a person since deceased, (vi) who was under a duty to do the very thing and record it, (vii) and who had no motive to misrepresent.¹⁴

In regard to requirement (iv), we believe that Mr. Beavis' notes satisfy this requirement, for the word "business" has been applied broadly. Thus, in *Conley v. Conley*,¹⁵ the Ontario Court of Appeal approved of a definition of "business" for the purpose of this rule, as "a course of transactions performed in one's habitual relations with others and as a natural part of one's mode of obtaining a livelihood". In regard to requirement (v), Mr. Beavis is dead. The other requirements are also satisfied.

¹⁴ J.D. Ewart, "Documentary Evidence: The Admissibility at Common Law of Records Made Pursuant to a Business Duty", (1981) 59 Can. Bar Rev. 52 at pp. 54-5.

¹⁵ [1968] 2 O.R. 677, 70 D.L.R. (2d) 352 (Ont. C.A.).

PART III

KNOWLEDGE OF SENIOR MEMBERS OF THE R.C.M.P., SENIOR GOVERNMENT OFFICIALS AND MINISTERS OF CERTAIN R.C.M.P. INVESTIGATIVE PRACTICES THAT WERE NOT AUTHORIZED OR PROVIDED FOR BY LAW

INTRODUCTION

1. In Part III of our Second Report we set out the details of a number of practices of the R.C.M.P. which raised questions of unlawful or improper activity. We described the development of the policies, identified the legal issues when appropriate and catalogued the extent and prevalence of the activities. We thus examined the degree to which the practices had become institutionalized within the Force. Later in the Second Report, in Parts V and X, we made recommendations as to legislative and administrative changes which we considered ought to be made to permit some of those practices to be carried on within the confines of the law and government policy.
2. In our Second Report we considered that an analysis and explanation of past practices was necessary for a proper understanding of the recommendations we were making in that report with respect to the future. We did not attempt, however, to identify the extent of knowledge about the practices which could be attributed to Ministers, senior government officials and senior members of the R.C.M.P. Our reason for not doing so was that any such attribution would have required that notices pursuant to Section 13 of the Inquiries Act be provided to the persons so identified, and those persons would have been entitled to make representations to us prior to submission of our Report. We therefore determined that we had no alternative but to refrain from referring to knowledge by individuals.
3. In Part III of this Report, we now consider the degree of knowledge of the various practices which was held by Ministers, senior government officials and senior R.C.M.P. members. For a full understanding of what is being referred to in each chapter, it is necessary to refer to the related chapter in our Second Report. At the beginning of each chapter in this part we have referred to the appropriate chapter in our Second Report.
4. Before proceeding with consideration of the individual practices, we wish to note the receipt of certain information, with respect to them, from Prime Minister Trudeau. The Prime Minister has an ultimate responsibility for the security of Canada and he is chairman of the Cabinet Committee on Security

and Intelligence. Furthermore the Commissioner of the R.C.M.P. and the Director General of the Security Service have had an extraordinary right of access to the Prime Minister. For those reasons we considered that we should question Mr. Trudeau about five matters in particular. We must say that in regard to each of them, the Commission had no evidence that pointed to Mr. Trudeau having had knowledge of any of the practices that were or might have been illegal.

5. From the outset of our inquiry we adopted the principle, which we stated on several occasions, that the testimony we heard would be given in public unless reasons relating to national security, the privacy of individuals or some other ground of public interest justified the receipt of the testimony *in camera*. We did not consider that the five areas of concern that we wished to ask Mr. Trudeau about fell into any of these categories. Consequently, we had expressed to Mr. Trudeau's counsel our desire that the Prime Minister testify on these five matters in public. However, at an *in camera* hearing on July 22, 1980, when Mr. Trudeau was testifying concerning an issue arising from a meeting of a Cabinet Committee, he volunteered then and there to answer the questions we might have on those five areas of concern. It was at that hearing that we were advised by his counsel unequivocally for the first time that Mr. Trudeau would not appear on a separate occasion to answer questions in public. Nevertheless, in view of our established principles of procedure, we declined to have the five basic questions posed to the Prime Minister at that *in camera* hearing, on the basis that we, rather than the witness, should determine the forum, as we did with all other witnesses.

6. Very shortly thereafter, on August 1, 1980, counsel for Mr. Trudeau wrote us a letter, with which he enclosed a letter written by Prime Minister Trudeau, which we shall quote now in its entirety (it will be observed that questions 1 and 5 deal not with practices but specific matters which, it seemed to us, should also be raised with Mr. Trudeau):

Dear Mr. Nuss:

In light of the McDonald Commission's refusal to hear my testimony on the five questions set out in the Chairman's letter of July 17, 1980, at the *in camera* hearing on July 22, 1980, I have given consideration as to whether or not my answers should be submitted to the Commission in writing. I have concluded that I should respond to the questions in writing.

My answers to the questions follow:

Question 1. Whether Prime Minister Trudeau was, before the testimony of former Constable Samson at his trial in March 1976, aware of the A.P.L.Q. incident.

Answer I was totally unaware of any involvement on the part of the RCMP in the APLQ incident prior to former Constable Samson's testimony in March 1976.

Question 2. With regard to mail check operations, whether Prime Minister Trudeau was aware that the R.C.M.P., whether in criminal investigations or the work of the Security Service, opened first class mail; whether he was aware of the report of the Royal Commission on Security concerning this matter; and whether

he received a letter from Mr. Ralph Nader on this subject and, if so, how it was dealt with.

Answer As to the first part of the question, no. The first knowledge I had of R.C.M.P. mail opening was when it was drawn to my attention in November 1977. With respect to my knowledge of the Report of the Royal Commission on Security (Mackenzie) concerning this matter, I must either have read their comments on the "interception of mail for security purposes" or had them drawn to my attention. I have no recollection of having had detailed discussions on the point.

I did not personally receive or reply to Mr. Nader's letters nor was I briefed about the answers which I understand were sent.

Question 3. With regard to surreptitious entries, whether Prime Minister Trudeau was aware that the R.C.M.P., in criminal investigations or in the work of the Security Service, entered premises without a warrant and without the consent of the owner or occupier, to install electronic listening devices, or to search and photograph or copy physical or documentary evidence.

Answer I neither knew nor was I informed of any specific instance where a surreptitious entry was effected. However, it was not inconceivable to me that on occasion the Security Service or a Police Force would use investigative or intelligence gathering techniques which would have involved clandestine activities, including surreptitious entries.

Question 4. With regard to the provision of income tax information by the Department of National Revenue to the R.C.M.P. Security Service or C.I.B., whether Prime Minister Trudeau was aware that such information was provided for purposes unrelated to enforcement of the Income Tax Act or Regulations.

Answer No.

Question 5. Whether Prime Minister Trudeau ever changed the policy he announced in June 1969, concerning greater autonomy and civilianization of the Security Service.

Answer No.

I would like you to transmit the answers to the Commission on my behalf. As I have already indicated to you I am prepared to have the answers made public.

Yours sincerely,

"P.E. Trudeau"

7. Following receipt of this letter, we considered whether we should attempt to have Mr. Trudeau appear at a public hearing to answer the five questions and supplementary questions relating to those matters. We considered that we could do so if in law we would be successful, if necessary, in compelling the Prime Minister's attendance. We asked our chief counsel to advise us in this regard. His opinion was as follows:

Mr. Johnson has informed me that the Commissioners would like an opinion as to whether or not the Prime Minister is compellable as a witness

before the Commission and also that the opinion should be provided promptly so that a decision can be made as to how to proceed....

It may be as well to summarize my views before setting out the reasoning which leads me to the conclusions I express:

1. The Prime Minister is compellable as a witness.
2. In the circumstances, however, it is my opinion that the Prime Minister could have the subpoena of the Commission set aside in the courts if he chose to do so.
3. In view of the conclusion which I have reached, I have not examined the procedure for compelling attendance should the Prime Minister decide to ignore a subpoena.
4. Accordingly (although I have not been asked for a recommendation) I recommend as strongly as I can that answers to the five outstanding questions be obtained in writing and added to the transcript of 22 July 1980, and then released by agreement as suggested at Volume C98, pp. 13013, 13016 and 13019.

In my view the legal position with respect to the matter may be summarized as follows:

The Prime Minister is in the same position as any other citizen with respect to the subpoena powers of courts or other tribunals, but the Court will protect the Prime Minister, as it will protect any other citizen, by setting aside a subpoena where it appears that:

- (i) the evidence sought is irrelevant;
- (ii) the use of a subpoena is an abuse of process;
- (iii) the subpoena is oppressive;
- (iv) the evidence sought is recognized by law as privileged from production; and
- (v) the Court may exercise a residual discretion to set aside in appropriate cases where none of the first four grounds above are present....

Having read the transcript of 22 July 1980 there are clearly substantial arguments which can be advanced on behalf of the Prime Minister under each one of the foregoing grounds. In my view this is particularly so when there has been voluntary attendance, answers tendered but questioning refused, partial answers or references to four of the five remaining questions in answers already given, the text of answers provided to counsel, and the person concerned will be, at least, the principal recipient of the Commission's report. Frankly, I would be astonished if a Court did not in these circumstances set aside a subpoena.

As a result of the foregoing opinion, we decided that we should not seek to compel the attendance of Prime Minister Trudeau before us at a public hearing. In consequence, we have not been able to examine Mr. Trudeau in detail as to these matters.

CHAPTER 1

SURREPTITIOUS ENTRY

1. In our Second Report, Part III, Chapter 2, we described surreptitious entry, a practice of the R.C.M.P., whereby premises were secretly entered in the course of an investigation, without the consent of a person entitled to give such consent. The Second Report also described the techniques involved, the reasons advanced for their use, the extent and prevalence of such use, the Force's operational policies with respect to the techniques, and the legal issues arising from this practice.

2. We now attempt to examine the extent to which this practice was known and reviewed at the level of Ministers, senior government officials and senior members of the R.C.M.P. The knowledge of the latter individuals will be reviewed in general terms with respect to the two main operational techniques during which this practice is deployed by the Force, namely: in the installation of electronic listening devices, and in conducting intelligence probes. Finally, we examine the extent to which the practices were known to specific Ministers, senior government officials and senior R.C.M.P. members.

A. SURREPTITIOUS ENTRY FOR THE PURPOSE OF INSTALLING A LISTENING DEVICE: KNOWLEDGE OF THE PRACTICE IN GENERAL TERMS AS DISTINGUISHED FROM KNOWLEDGE OF SPECIFIC CASES

3. In a letter in 1965, Commissioner McClellan drew to the attention of the Deputy Minister of Justice the absence of any statutory authority for a police officer to enter premises surreptitiously to install an electronic eavesdropping device such as a concealed microphone. Commissioner McClellan expressed his belief

that if a peace officer was to enter a premise under certain conditions to install an eavesdropping device, the peace officer would be contravening certain sections of the Criminal Code, making himself not only liable for criminal prosecution, but also liable in a civil action.

However, he did not indicate what sections of the Criminal Code he had in mind. His letter, which was a lengthy proposal for legislation to authorize the various means of electronic eavesdropping, recommended that "legislation be enacted to authorize the issuance of a search warrant for the purpose of entering premises to effect the installation of eavesdropping equipment" (Ex. E-1, Tab 2H).

4. On July 5, 1968, according to a memorandum by Commissioner Lindsay, there was a meeting in the office of the Solicitor General, then the Honourable J.N. Turner, attended by Mr. Lindsay, the Director of Criminal Investigations

(Assistant Commissioner Cooper), the Director of Security and Intelligence (Assistant Commissioner Higgitt) and the Deputy Solicitor General (Mr. T.D. MacDonald). The purpose was to brief Mr. Turner generally on the use of electronic intrusion in the investigation of crime, because of an impending specific operation. The memorandum records that Mr. Turner

questioned us about the legal implications and we advised there was no legal bar, except a case against us for civil trespass, to which Mr. T.D. MacDonald agreed.

(Ex. E-1, Tab 2C.)

A longhand note on the same document, by Commissioner Lindsay, records that on July 11, 1968, he discussed the same matter "in very general terms" with the new Solicitor General, Mr. McIlraith.

5. While the Protection of Privacy Act was being considered, the R.C.M.P., on April 10, 1972, explained to the Associate Deputy Attorney General, Mr. D.H. Christie, the desirability of legislation explicitly providing for surreptitious entries to enable devices to be installed. On May 24, 1972, the Solicitor General, Mr. Goyer, wrote the Minister of Justice, the Honourable O.E. Lang, expressing hope that active consideration be given to amending the proposed legislation to provide expressly that a peace officer be able to enter premises in order to install devices.

6. Thus, while the issue was well-known at the level of Ministers and senior officials, as well as within the R.C.M.P., it is doubtful that it was present in the minds of any of the members of the Standing Committee on Justice and Legal Affairs who were considering the Protection of Privacy Bill in 1973. We have read the proceedings of the House of Commons and of the Standing Committee on Justice and Legal Affairs. It is true that members were undoubtedly aware that surreptitious "methods" were often utilized — an apt reference to telephone tapping of telephone company facilities, the tapping of wires and the use of induction devices. However, the fact that, in order to install eavesdropping devices, trespass would often be necessary was not brought to the attention of members of Parliament. There was no clause in the bill expressly dealing with the issue, which would have focussed their attention.

B. SURREPTITIOUS ENTRY FOR THE PURPOSE OF 'INTELLIGENCE PROBES': KNOWLEDGE OF THE PRACTICE IN GENERAL TERMS AS DISTINGUISHED FROM KNOWLEDGE OF SPECIFIC CASES

7. There is little direct evidence before us as to the extent to which senior personnel in the R.C.M.P. knew that on occasion members of the Force investigating crime would enter premises without a search warrant and without the permission of the owner or occupier. However, we have already commented on the circumstantial evidence that points to a tolerance of the practice — a tolerance that must have existed at high levels.

8. There is no evidence whatever before us that senior public servants or Ministers were ever made aware that this technique was used on occasion in the investigation of crime.

9. Many of the cases in which, since July 1, 1974, judges have given authorizations as a result of applications by agents of the Solicitor General of Canada under section 178.13 of the Criminal Code have been in respect to interception by microphones. Leaving aside the first half-year of the operation of the Protection of Privacy Act (of which section 178 was a part), from 1975 to 1979 the average annual number of interceptions by microphone under authorization was 193.¹ Taking 1979, for example, the number of interceptions by microphone in that year in all of Canada was 142, compared with 1,494 cases in which there was interception of telecommunications. (It must be remembered that these figures do not include interceptions authorized as a result of applications made by agents of provincial attorneys general.) Many of these interceptions required trespassory entry to be made, unless the authorizations given by the judges expressly or by implications of law can be said to have lawfully authorized the entries and thus negated trespass. As far as we can tell, most judicial authorizations of interception by microphone installations in what ordinarily would be trespassory situations have not expressly authorized entry. Consequently, the authority for lawful entry, if it existed, must have rested upon the operation of section 26 of the Interpretation Act or section 25 of the Criminal Code. This issue is discussed at length in Part III, Chapter 3, of our Second Report.

C. SUMMARY AND FINDINGS AS TO THE KNOWLEDGE OF CERTAIN SENIOR MEMBERS OF THE R.C.M.P., AND MINISTERS, OF THE PRACTICE OF SURREPTITIOUS ENTRY

(a) Commissioner W.L. Higgitt

Summary of evidence

10. Mr. Higgitt agreed that if a long-term microphone was to be installed and operative, either the cooperation of someone who had a right to be in the premises would have to be obtained or a surreptitious entry would have to be effected (Vol. 84, p. 13833). The installation of microphones was more likely to involve surreptitious entry than would telephone interceptions (Vol. 88, p. 14508). Mr. Higgitt said he recalls being advised that the Criminal Investigation Branch had legal opinions that surreptitious entries for the installation of microphones "might not necessarily be criminal violations because of the intent involved". He added that: "There was no assurance given that there would never be". He said that this opinion was provided by the Department of Justice to the R.C.M.P. and the Solicitor General's Department (Vol. 88, p. 14510). We have already noted that Commissioner Higgitt was present at a meeting with the Solicitor General, Mr. Turner, on July 5, 1968, when that advice was passed on to Mr. Turner.

11. Commissioner Higgitt testified that after he became Commissioner, he continued to advise Solicitors General that there was no legal bar in such

¹ The annual statistic for the years 1975 to 1978 that has been used in calculating the average is found in "updated" form in appendices to the Annual Report of the Solicitor General of Canada for 1979 as required by section 178.22 of the Criminal Code.

situations, certainly insofar as the entry itself was concerned, except possibly a case for civil trespass (Vol. 88, p. 14513). He said he was never advised by the legal advisers to the government that there was a crime involved (Vol. 88, p. 14514). A person installing an electronic device might be caught by surprise by the owner of the building or house, or by patrolling police. The risk of being caught in the premises troubled Mr. Higgitt and others placed highly in the Force, and according to Mr. Higgitt, was one of the factors taken into account when these operations were being considered (Vol. 89, pp. 14581-2).

12. In his meeting of March 1972, with the Minister of Justice, Mr. Lang, the Solicitor General, Mr. Goyer, and officials of the two Departments, Commissioner Higgitt indicated that the R.C.M.P. might have to engage in some kind of illegal or quasi-illegal activity to accomplish the installation of electronic listening devices, but he did not define before us what the illegal activity he mentioned was. He denied that when he spoke at that meeting of illegal methods of operation he was speaking only of trespass. Thus he disagrees with the implications of Supt. Cain's notes of the meeting (Ex. M-44) which state that Commissioner Higgitt indicated "unorthodox (perhaps illegal) methods (trespassing) might have to be committed" (Vol. 112, pp. 17287-8).

13. Mr. Starnes prepared a memorandum dated July 26, 1971, which he intended to show to Mr. Goyer. It concluded as follows:

Unlike the Certificates of Review for telephonic and telegraphic interceptions, which are made under the authority of the relevant sections of the Official Secrets Act, we are not suggesting that you authorize the continuance of such operations, thereby avoiding some of the political and other difficulties which could arise from having a Minister of the Crown directly involved in operations which are or may be outside the law.

(Ex. M-36, Tab 26; Vol. 111, p. 17153.)

The document was never shown or given to Mr. Goyer. Mr. Higgitt stated that he asked Mr. Starnes not to give it to Mr. Goyer (Vol. 111, p. 17156). Mr. Starnes had no idea why Mr. Higgitt made this decision (Vol. 103, p. 16333); Mr. Higgitt stated that it was conceivable that he decided not to use the memorandum because the sentence quoted above would give rise to problems. "You don't go out of your way to put Ministers at risk, if indeed, that was putting them at risk. I don't know whether it was or not" (Vol. 111, p. 17159). Mr. Higgitt maintained, however, that he had advised Mr. Goyer concerning the problems involved with respect to entering premises for the purposes of installing technical devices (Vol. 111, pp. 17166-7).

14. We turn now to Commissioner Higgitt's knowledge of the use of surreptitious entry for other purposes. In 1966, when Mr. Higgitt was the Officer in charge of the Counter-espionage Branch, the Director of Security and Intelligence declared a moratorium on the use of surreptitious entry for the purpose of obtaining documents and physical intelligence (Vol. 84, pp. 13842-3). The moratorium was lifted by the D.S.I. in 1969 (Vol. 84, p. 13844). Commissioner Higgitt told us that there was a requirement to use this method to get certain documentation very urgently required by the government (Vol. 84, p. 13844). In 1971, while he was Commissioner, there was a detailed revision of Security Service policy which gave to officers in charge in the field the right to mount

an operation to enter premises to obtain documentary or physical intelligence, prior to obtaining the consent of Headquarters, if the time factor precluded obtaining prior consent. Commissioner Higgitt told us that he had discussed with Ministers entries for the purpose of obtaining physical and documentary intelligence. He also told us that documents existed which would support his assertion that he had discussed with them the legal problems involved in such operations (Vol. 110, pp. 16953-60). We have not found any such documents, nor have any Ministers who have testified acknowledged any such conversations. Nor did his counsel, who have access to R.C.M.P. files, produce such documents.

Conclusion

15. Clearly Commissioner Higgitt, who had had extensive experience on the Security and Intelligence side of the R.C.M.P., knew everything there was to know about the various circumstances and reasons giving rise to entering private premises without a warrant and without the permission of any person entitled to give such permission. He knew that such entries were common for the purpose of installing listening devices, that the entry itself might constitute trespass, and that things done in the course of the entry might constitute criminal offences (e.g. when damage occurred). He knew that such entries were common for the purpose of obtaining documents and physical intelligence. Having statutory management of the Force, his failure to determine the legal quality of these acts and to ensure that the entries were in all respects lawful was unacceptable.

(b) Mr. Starnes

Summary of evidence

16. Mr. Starnes knew that, prior to the enactment of the Protection of Privacy Act in 1974, the R.C.M.P., both for security and intelligence purposes and C.I.B. purposes, were conducting electronic surveillance (Vol. 107, p. 16687). Mr. Starnes was aware that members of the Security Service might have to enter the premises to install microphones, although telephonic interception was usually made without entering premises (Vol. C30, pp. 3736-7). He stated that microphone operations and surreptitious entries could sometimes not be carried out without being in breach of the law (Vol. C30, p. 3704). Mr. Starnes' understanding of the law, based upon the legal opinion that the Force had obtained from the Department of Justice, was that no legal bar existed, except for a case for civil trespass against a member of the Force who might be caught (Vol. 91, pp. 14849-50). He acknowledged on another occasion before us that technical surveillance involves various risks, and indicated that a person involved in a delicate counter-espionage surveillance operation might have to accept being charged with an offence in order to ensure the safety of the operation (Vol. 90, p. 14696).

17. Mr. Starnes was aware that members of the Security Service entered premises to inspect written or physical intelligence (Vol. C30, pp. 3734-35). He stated that on some occasions he was asked to approve such operations (Vol.

104, pp. 16371-2), but that he did not think that he had been asked to approve more than two or three (Vol. C27, p. 3143). No ministerial authority was sought for the acquisition of documentary and physical intelligence through clandestine entry and departure (Vol. 90, pp. 14720-21). Since 1959, entry for the purpose of obtaining documentary or physical intelligence had required the approval of the Director of Security and Intelligence, as Commissioner Higgitt had told us. Mr. Starnes said that this procedure continued through his own term of office (Vol. 90, p. 14721). Mr. Starnes told us that he "certainly" could not recall specific discussions with Mr. Goyer or Mr. Allmand, although he possibly had discussions with Deputy Ministers, as to entering premises surreptitiously to obtain written or physical intelligence (Vol. 103, p. 16355; Vol. 109, p. 16933; Vol. C38, p. 5172).

Conclusion

18. Mr. Starnes knew that entry into private premises without a warrant and without the permission of any person entitled to give permission was a common technique used by members of the Security Service to enable them to install listening devices, and for the purpose of obtaining documents and physical intelligence. As exemplified by Operations Bricole and Ham, he knew that on occasion documents and other things were removed from such premises. His failure to ensure that any entries were in all respects lawful was unacceptable.

(c) Mr. Dare

Summary of evidence

19. Mr. Dare told us that he was not aware that Mr. Starnes and Mr. Higgitt had expressed concern (i.e. at the meeting of March 1972, before Mr. Dare became Director General) that entering for the installation of devices could be illegal, and that specific provisions should be made in the statute under consideration in 1974 to provide for entry as well as installation (Vol. 125, p. 19556). Mr. Dare became aware only recently — that is, during the period of our Commission of Inquiry — that this might be a problem (Vol. 125, p. 19556).

20. Before June 30, 1974, electronic eavesdropping devices, other than for the interception of telephone conversations, were installed without warrant but with the authorization of the Director General of the Security Service. Naturally, therefore, Mr. Dare was aware of this procedure and in fact authorized it (Vol. 125, pp. 19557-8). At that time, Mr. Dare felt that neither the installation nor the entry into premises to install was illegal. He stated that this view was not based upon a Department of Justice or a legal opinion but rather was an "internal operating opinion" (Vol. 125, p. 19559).

21. Mr. Dare was aware, both before and after June 30, 1974, that the Security Service entered premises for the purpose of locating documents or other physical evidence (Vol. 125, p. 19583). Mr. Dare was aware that those operations were conducted without any type of warrant until July 1, 1974 (Vol. 125, p. 19584). During the fourteen months he was Director General before June 30, 1974, he felt that this operation "was not legal", although at that

time, he had no legal opinion from Justice or the R.C.M.P. Legal Branch (Vol. 125, pp. 19584-5). Subsequent to the amendment of June 30, Mr. Dare felt, basing his view on internal discussions within the Force, that such entries without warrants and without consent were in fact legal (Vol. 125, p. 19585). He said that it was the policy of the Security Service not to approve any such operation after July 1, 1974, unless a warrant to intercept oral communications was in effect with respect to the premises.

22. Mr. Dare maintained that at no time did he seek a warrant with the intent of misleading the Minister by saying that the warrant was for an oral intercept, while not himself believing that the Security Service was installing the electronic device (Vol. 125, p. 19615). According to Mr. Dare, he did not know of any instance in which an application for a warrant to install a microphone was made and a warrant obtained where the sole purpose was in fact to conduct a physical intelligence operation (Vol. C88, pp. 12107-8).

Conclusion

23. Mr. Dare knew that members of the Security Service entered private premises without a warrant and without the permission of a person entitled to give such permission, before and after July 1, 1974, for the purpose of installing listening devices. We believe that both before and after that date he considered that to do so was lawful. He has also known, throughout his tenure as Director General, that such entries were carried out for the purpose of examining and photographing documents and things, and he candidly admits that before July 1, 1974, he thought that doing so was illegal. Since July 1, 1974, as will be seen when we discuss Mr. Allmand's role, Mr. Dare has considered that the practice is legal if carried out in conjunction with the installation of a listening device when that installation has been authorized by a warrant under section 16. We believe that Mr. Dare has not been a knowing party to the two occasions of which we are aware, when applications for such warrants have been made and the sole real purpose has been to have a warrant to "cover" a search for documents. In other words, he was not a party to the deception of the Minister.

(d) Commissioner Nadon

Summary of evidence

24. Commissioner Nadon was questioned about the "Damage Report", prepared in the summer of 1974 as to what "damage" former Constable Samson could do if he revealed publicly practices or occurrences of which he knew (M-88, Tab 4). Commissioner Nadon stated that at the time of the Report he did not know what a PUMA operation was, and that, while he knew there were such operational codewords as PUMA, COBRA and VAMPIRE, he could not tell the difference between one and the other unless it was explained to him (Vol. 128, p. 19998). Mr. Nadon's whole career in the R.C.M.P. had been spent on the C.I.B. side of the Force. Commissioner Nadon stated that he "gathered" that a PUMA operation was an intelligence operation in which individuals, while on particular premises, would observe documents, make

notes, or photocopy the documents. He told us that such an operation, in his mind, did not include taking away documents or photocopying them in other premises (Vol. 128, p. 19999). On the criminal operations side, Mr. Nadon said he had heard of "intelligence probes". These he said involved the examination of and obtaining information from documents "on the spot" in any place. Mr. Nadon said he was not aware of entry into premises "illegally" on the criminal side for the purpose of an intelligence probe (Vol. 128, pp. 20000-1). (This reference to "illegally" appears to relate to going onto premises without a warrant and without the consent of the owner or occupant.)

Conclusion

25. We have no reason to doubt Commissioner Nadon's testimony on this point, and we therefore conclude that he did not know about surreptitious entries on the Security Service side, and that on the Criminal Investigation Branch side he did not know about "intelligence probes" in the sense of warrantless trespassory entries. In regard to each side of the Force he appears to have understood the members of the Force to take the opportunity, while lawfully on premises, to examine and copy documents found there, but he does not appear to have been aware of non-consensual entries without a warrant.

(e) The Honourable John N. Turner

Conclusion

26. On the sole basis of Commissioner Lindsay's memorandum of July 5, 1968, and in the absence of testimony from either Mr. Lindsay or Mr. Turner on the subject, we are not prepared to draw any inference as to exactly what Mr. Lindsay said to Mr. Turner that day about whether electronic intrusion would involve the commission of civil trespass.

(f) The Honourable George J. McIlraith

Summary of evidence

27. Commissioner Lindsay, who was not called to testify on the subject, recorded on July 11, 1968, a note that the memorandum which he had prepared concerning his meeting with Mr. Turner "was discussed with Honourable George McIlraith, today in very general terms, but it was not read by him. He indicated that he understands the situation". It is not at all clear from this note whether the "legal implications" mentioned in para. 4 of the memorandum were discussed with Mr. McIlraith.

28. Senator McIlraith, when asked about Commissioner Lindsay's note, did not think there was any discussion with him by Mr. Lindsay or anyone else at any time about the legality of entering premises as compared with installing such devices (Vol. 118, p. 18347). On the other hand, to the extent that (telephone) wiretaps might involve entering premises, Senator McIlraith told us that he was told, he suspects by the Commissioner, that it was legal according to the Department of Justice (Vol. 118, p. 18359). He says that he was not aware of entries made for the purpose of searching for documents or things, photographing or copying them, or removing them to be photographed

and copied and then returned. He says that these subjects were not discussed with him (Vol. 118, p. 18365; Vol. 120, p. 18798). Nor did he know that, once inside premises to install a wiretap, those doing so would search and copy material of interest (Vol. 118, p. 18365).

29. Mr. Starnes said he was unable to recall whether he discussed with Mr. McIlraith the question of surreptitious entries for the purpose of obtaining physical and written intelligence (Vol. C30, p. 3782; Vol. 103, p. 16355; Vol. C38, p. 5172). Mr. Starnes told us that he understood that Mr. McIlraith had accepted the recommendations of the Royal Commission on Security (although Mr. Starnes could not recall specifically reviewing the recommendation and determining Mr. McIlraith's position) that the head of the Security Service, not the Minister, should be responsible for approving audio surveillance ("bugs"). Therefore, Mr. McIlraith was not being asked to approve audio surveillance, and he had not asked to approve it (Vol. 106, pp. 16627, 16631-4). There was no question in Mr. Starnes' mind, however, that Mr. McIlraith was well aware that the Security Service was using audio surveillance methods (Vol. 106, p. 16632). Mr. McIlraith was asked to approve telephone interceptions under the Official Secrets Act (Vol. 106, p. 16633). When a new request for telephone interception was being made, Mr. Starnes stated that Mr. McIlraith would have been provided with a brief. If that brief was not sufficient for his purposes, it would have been expanded. Installations which had been in existence for some time would be listed. The Minister would review those if he wished, and there would be a further list of telephonic interceptions which were being revoked (Vol. 106, pp. 16628-9).

Conclusion

30. By his own admission, Senator McIlraith knew that what was then known as the Security and Intelligence Branch of the R.C.M.P. entered premises, without the consent of the owner or occupier, to install at least one kind of listening device — telephone wiretaps. He understood that legal advice had been obtained that such entries were legal. We are not prepared to conclude, solely on the basis of Commissioner Higgitt's testimony unsupported by documentation, that Mr. McIlraith was informed that entries were made for any other purpose.

(g) The Honourable Jean-Pierre Goyer

Summary of evidence

31. In a written statement which he placed before us, Mr. Starnes stated:

In the case of Jean-Pierre Goyer and his successor, I can personally attest to their having been informed about various clandestine activities since I participated in those briefings. They were not, of course, informed about all the different techniques used by the Security Service to obtain certain kinds of information. However, both Ministers were shown the sophisticated installations . . . where material derived from microphone and telephone interception operations is received, taped and processed. It would be impossible for anyone receiving such briefings not to be aware, for example,

that some of the microphones in question have been installed by other than normal methods.

Mr. Starnes also recalled the meeting held in March 1972 with the Minister of Justice (Mr. Lang), Mr. Goyer, and Commissioner Higgitt, which discussed draft legislation on electronic surveillance. At that meeting, Mr. Starnes recalls pointing out that he could hardly imagine any judge issuing a warrant for the installation of electronic eavesdropping devices when he knew that the devices probably would have to be installed by methods which might be slightly outside the law. Mr. Starnes told us that he pointed out that microphones did not get installed by ringing the front doorbell.

32. Mr. Goyer testified that he assumed that the installation of electronic eavesdropping devices was legal, and says that he was told that it was legal and that the Minister of Justice had confirmed its legality (Vol. 121, p. 18991.) (No such advice is known to the Commission, although the Varcoe opinion of 1954 advised that *telephonic* interception could be undertaken by virtue of a warrant issued by a justice of the peace under section 11 of the Official Secrets Act. We know that the R.C.M.P. came to regard this opinion as somehow authorizing interception of non-telephonic conversations, although in practice the Force did not require microphone interceptions to comply with the section 11 procedure.) He also knew that the Department of Justice had said that there was a "grey area" of "civil trespass" which was a concept unknown to him as a civil law lawyer from Quebec. He says that it was explained to him that in certain provinces the penetration of private premises could give rise to a civil action for damages (Vol. 121, pp. 18976-7). He is also of the impression that the Department of Justice had advised that, if the law authorized electronic eavesdropping, the law authorized the doing of a thing which is essential to accomplish it. He says that the R.C.M.P. explained to him that there was no need to provide in the law for entries for the purpose of installing devices, as there was no liability for "civil trespassing" (Vol. 121, p. 18978; Vol. 122, p. 19022).

33. Mr. Goyer told us that at the meeting in Mr. Lang's office in 1972, the principal preoccupation of the R.C.M.P. was the problem of "civil trespassing" in relation to electronic eavesdropping. He said that no one at the meeting indicated that criminal acts would occur at the time of installation. He said that the prevailing opinion in the Department of Justice was that, if there was a right to install an electronic listening device, there was a right to take measures to do so (Vol. 122, pp. 19023-5). Mr. Goyer told us that it is only in some of the provinces, other than Quebec, that there is such a thing as "civil trespass". From his testimony it appears to be his impression that the existence of such a law depends upon the existence of a statute (Vol. 122, p. 19018). In this impression we believe he is mistaken.

34. Mr. Goyer was asked about the monthly reports on microphone installations which he initiated in 1971. He stated that he did not authorize the installations, but merely took notice of them. Mr. Goyer said that he wanted to know where the R.C.M.P. concentrated its efforts, and to assure himself that there were no witchhunts (Vol. 121, p. 18974). Mr. Starnes told us, however,

that when Mr. Goyer decided to ask for monthly reports on microphone installations, it was his (Mr. Starnes') understanding that the Minister, having involved himself in this process, was implicitly at least looking at an area of Security Service operations and *ex post facto* saying "I think those are appropriate" (Vol. 103, p. 16344; Vol. 108, p. 16719). Mr. Starnes accepted Mr. Goyer's decision that Mr. Goyer would receive and sign a report monthly as to installations that had been made. Mr. Starnes had prepared a memorandum to be submitted to Mr. Goyer with the first such report, but said that he accepted Mr. Higgitt's suggestion that the memorandum not be given to Mr. Goyer. The memorandum (Ex. MC-1, Tab 5) stated that the Security Service was:

not suggesting that you authorize the continuance of such operations, thereby avoiding some of the political and other difficulties which could arise from having a Minister of the Crown directly involved in operations which are or may be outside the law.

By these words Mr. Starnes told us (Vol. C30, pp. 3742-3) that he was referring to the caution that had been given by the Deputy Solicitor General, Mr. T.D. MacDonald, (recorded in Commissioner Lindsay's memorandum of July 5, 1968, concerning the meeting held that day with Mr. Turner). Mr. MacDonald had warned that entries for such purpose might occasionally involve petty trespass (Ex. E-1, Tab 2C). Although Mr. Starnes did not show Mr. Goyer the memorandum, he told us that he thinks that he discussed the substance of the memorandum with Mr. Goyer on July 26, 1971 (Vol. C30, p. 3749).

35. Mr. Starnes testified that Mr. Goyer was not willing to accept the recommendations of the Royal Commission on Security that the head of the Security Service, rather than the Minister, authorize microphone installations. Mr. Starnes said that he and Mr. Higgitt had suggested to Mr. Goyer, when he first raised the question, that since microphone operations sometimes involved "extraordinary" measures for their installation, Mr. Goyer might prefer not to be aware of such operations as a Minister of the Crown (Vol. 103, pp. 16334-5). Mr. Higgitt stated that, when Mr. Goyer asked in July 1971 for the monthly report on microphone installations, he did not inform Mr. Goyer in detail as to how these devices were installed. Later Mr. Higgitt stated that he had advised Mr. Goyer of problems involved with entering premises in order to install technical devices (Vol. 111, pp. 17152, 17166-7). Mr. Higgitt later told us that Mr. Goyer did not want to know how the various devices were being installed, but certainly knew in a general way how this was done (Vol. 112, pp. 17309-10). Mr. Starnes told us as well that Security Service officials tried to inform Mr. Goyer, that in order to install microphones, it was sometimes necessary to do so by surreptitious means (Vol. 107, pp. 16689-90). Mr. Starnes told us that he could not recall orally telling Mr. Goyer how each of these installations was made, although he said that if Mr. Goyer had asked the question, he would have told him. Mr. Starnes told us that he had no recollection of a discussion of that kind, but that one may have taken place (Vol. C32, pp. 4009-10).

36. Mr. Starnes cannot recall having specifically discussed with Mr. Goyer the question of surreptitious entries for the purpose of obtaining physical and written intelligence (PUMA operations) (Vol. C30, p. 3782). A briefing document used in conjunction with a tour of the R.C.M.P. electronic surveillance installation dealt with telephone intercepts and permanent audio installations, but did not refer to PUMA (entries to install devices) at all. Mr. Starnes did not think that this was unusual, since, when Ministers were taken into the electronic surveillance installation, PUMA would not enter into the discussion, because it was not a technical audio surveillance operation (Vol. C30, p. 3782).

Conclusion

37. Unquestionably Mr. Goyer knew that entries were made onto premises without the consent of the owner or occupier to install listening devices and, by his own admission, he knew that in certain provinces the penetration of private premises could give rise to an action for damages. On the other hand, he was under the impression that the installation of the devices was legal, and it is regrettable that the memorandum that Mr. Starnes prepared in July 1971, was not shown to him, for it would have alerted him to the possibility of illegality. As for the meeting in Mr. Lang's office, we note that even Mr. Higgitt and Mr. Starnes did not go so far as to testify that they had told those present of any specific acts that might be offences. We do not consider it possible to go beyond the notes of Supt. Cain, made by him shortly after the meeting and therefore more likely to be reliable than memory a number of years later. We think that only trespass was referred to at that meeting.

38. We are not prepared to conclude, solely on the basis of Commissioner Higgitt's testimony unsupported by documentation, that Mr. Goyer was ever told about surreptitious entries for purposes other than the installation of listening devices.

(h) The Honourable Warren W. Allmand

Summary of evidence

39. In the period prior to the Protection of Privacy Act coming into effect on July 1, 1974, applications were made to Mr. Allmand for warrants for telephone intercepts both in cases of espionage and in cases of internal subversion or terrorism. Mr. Allmand was aware that applications for telephone interception were being made for non-espionage matters, that is, matters of internal terrorism or subversion (Vol. 114, p. 17686). Mr. Allmand did not seek an official legal opinion on this matter, but it appeared to him that requests for warrants involving espionage and subversion, including domestic terrorism, were within section 11 of the Official Secrets Act (Vol. 114, pp. 17687-9). His reading of the section, although he never discussed it in detail with the R.C.M.P., led him to believe that section 11 could also be used for warrants for the installation of bugging devices (Vol. 114, p. 17582). (However, the R.C.M.P. did not in fact obtain warrants from a justice of the peace under section 11 when they intended to install listening devices in premises.)

40. The R.C.M.P. sought Mr. Allmand's authorization only for telephone interceptions and not for bugging, but they reported to him each month on

microphone installations ("bugs") they had carried out both on the criminal investigation side and on the Security Service side (Vol. 114, p. 17602). Mr. Allmand stated that neither Mr. Higgitt nor Mr. Starnes had told him about being concerned about the question of trespassing in the course of installing bugs and wiretaps (Vol. 114, pp. 17652, 17654, 17656-60). Mr. Allmand was told at his initial briefing sessions in December 1972 that there was a legal basis for wiretapping and bugging (Vol. 114, pp. 17581, 17608-9). There was no intimation that any of the matters he was briefed on were illegal (Vol. 114, p. 17609). Mr. Dare confirmed this last point. He testified that before the Protection of Privacy Act came into effect on July 1, 1974 he never discussed with Mr. Allmand the legality of microphone installations listed in his monthly report he presented to the Minister (Vol. 125, p. 19566).

41. Mr. Allmand referred to his testimony before the House of Commons Justice and Legal Affairs Committee in June 1973, where he indicated that the R.C.M.P. and the Security Service engaged in bugging (Vol. 114, p. 17610). At that time no one suggested that the bugging carried out according to the authorization system was illegal (Vol. 114, pp. 17653, 17611). On another occasion he asked his Deputy Minister, Mr. Tassé, to check on its legality. Mr. Tassé later reported that he had checked with the Department of Justice and that entry for bugging was legal (Vol. 114, p. 17586; Vol. 115, p. 17703, 17719; Vol. 116, p. 18059). Mr. Allmand told us that this opinion confirmed what he had believed up to the time the concern arose (Vol. 116, p. 18059; Vol. 114, pp. 17582-3). On another occasion, Mr. Allmand stated that throughout his term of office — which included a period of about nine months before the Protection of Privacy Act came into effect — he was "convinced" that, just as entries to observe were legal, so too entries to place "bugs" were legal (Vol. 115, p. 17709).

42. Turning to surreptitious entries for purposes other than electronic surveillances, Mr. Allmand told us that he did not know of specific instances when members of the R.C.M.P. had entered premises surreptitiously and taken documents or evidence away with them. Nor did he know of any specific incidents of entries to observe or to photograph, although he was "convinced" that entries for those purposes were legal and he was aware that they did occur (Vol. 115, p. 17701, 17717-9; Vol. 114, pp. 17663-4). He said that he did not seek an opinion on the legality of such entries by the Security Service because he did not recall it ever becoming an issue (Vol. 114, pp. 17665-6). He said that he did not have an indication from anyone that the practice was illegal. He could not recall who told him that such entries were legal, but felt it was part of his general briefing over a period of time. Furthermore, he said that he had been told that the general work the Security Service was carrying on was within the law and that various investigative techniques were within the law (Vol. 114, pp. 17666-7).

43. In October 1974, an article appeared in the Montreal newspaper, *Le Devoir*, which discussed a book by Professor Guy Tardif, a former member of the R.C.M.P. The article mentioned Operation 300, which was said to be surreptitious entry into homes when the owner was away, to obtain evidence by taking photographs, and then leaving without a trace. Mr. Allmand said he was

not aware of Operation 300 before this time (Vol. 114, pp. 17675-6). Mr. Allmand's assistant, Mr. Vincent, asked for guidance from the R.C.M.P. The R.C.M.P. suggested a reply, in case a question was asked in the House of Commons, and the memo was placed on a card in a briefing book for Mr. Allmand's use in the House of Commons. The suggested reply was "I am aware of the article and am examining it". Mr. Vincent's memo stated that he had been told "that this touches on a very sensitive aspect of the operations of the R.C.M.P. The R.C.M.P. officials at a senior level are investigating and will provide you with a report on the matter". Mr. Allmand does not recall seeing the memorandum, although he did see the card. No report was ever received from the R.C.M.P., no question was asked in the House of Commons and the card was probably taken out of the book and the matter dropped out of sight — perhaps because Mr. Vincent did not ordinarily deal with R.C.M.P. matters (Vol. 114, pp. 17672-85; Vol. 115, pp. 17722-26; Vol. 116, pp. 18059-60). Mr. Allmand did not make any inquiries as to the legal basis for such operations despite the Tardif incident (Vol. 114, p. 17678), but, as we have already noted, he was "convinced" that entries for such a purpose were legal. Mr. Dare told us that during the period of his tenure from May 1, 1973 to June 30, 1974, he did not specifically make Mr. Allmand aware of the fact of this kind of operation (Vol. 125, p. 19586). Mr. Dare also testified that he did not discuss the legality of those operations during that period, and that Mr. Allmand never raised the question of their legality with him (Vol. 125, pp. 19586-7).

44. While Mr. Allmand was asked about his knowledge of surreptitious entries for the purpose of observing and photographing documents, he was not specifically asked whether he knew that sometimes members of the Security Service, when they entered premises to install a listening device pursuant to a warrant issued by him under section 16, "rummaged" around and examined and photographed documents and things. However, Mr. Dare testified on this subject. He said that after June 30, 1974, the "oral communications warrant" obtained from the Solicitor General under section 16 of the Official Secrets Act was used by the Security Service as a basis on which to examine documents on premises, and photograph them where necessary (Vol. 125, p. 19588-9). Mr. Dare stated that this technique was clearly discussed with Mr. Allmand, and Mr. Dare believes that Mr. Allmand had been assured by his then Deputy Minister, Mr. Tassé, that this procedure was entirely legal (Vol. 125, p. 19589; Vol. C88, pp. 12106-7). Mr. Dare said that, although Mr. Allmand would not be advised on every occasion that a physical intelligence operation would be conducted at the same time a microphone was installed pursuant to a warrant, nevertheless Mr. Allmand was, from time to time, informed of the practice (Vol. 125, pp. 19589-90). Yet, in the majority of cases when oral communications warrants were sought from Mr. Allmand, Mr. Dare did not indicate to him that he was also contemplating a physical intelligence operation (Vol. 125, pp. 19598-99).

Conclusion

45. Whether, since July 1, 1974, the law permits surreptitious entry for the purpose of installing a listening device when the electronic surveillance has been authorized under section 178 of the Criminal Code or section 16 of the

Official Secrets Act, is a matter of uncertainty even today. Of course Mr. Allmand knew of such a practice, and regarded it as legal, as unquestionably has the Department of Justice more recently. As for his nine months as Solicitor General preceding the present legislation, Mr. Allmand by his own admission knew of the practice then, too, and we accept his evidence that he thought it was legal.

46. As for entries for the purpose of looking around and photographing things on site, Mr. Allmand candidly admitted that when he was Solicitor General he presumed that they occurred, but he said that he thought that they were legal. He and Mr. Tassé both said that the issue never came up for discussion, so that Mr. Allmand did not actually inquire about the legality of such operations, and his inference that they were legal was based on the general assurances that the R.C.M.P. gave him, that their work was within the law.

(i) The Honourable Francis Fox

Summary of evidence

47. Mr. Fox testified that after Commissioner Nadon's statement in 1973 before the Standing Committee on Justice and Legal Affairs, he thought it was clear that all members of the House of Commons were aware that the R.C.M.P. was engaging in electronic surveillance both in the form of telephonic interceptions and in the form of what is commonly known as bugging. He thought it would be impossible for them to know that electronic surveillance was taking place without thinking that the individuals involved had to enter a building to install a listening device (Vol. 163, pp. 24966-7). During Mr. Fox's term as Solicitor General, it was his impression that the problem had been solved completely with the passage of the 1974 law authorizing electronic surveillance. Nonetheless, the question was raised again. Mr. Fox relied upon a legal opinion prepared by Mr. Landry of the Department of Justice either during his or Mr. Allmand's respective tenures as Solicitor General. Mr. Fox thought that the opinion provided, in effect, that if Parliament had authorized the use of electronic surveillance, the individuals involved, under certain conditions, could employ reasonable means to carry out their tasks (Vol. 163, p. 24968).

48. Mr. Fox testified that in January or February 1977, the question was first raised about a police officer examining a place and documents he might find in the place while in the course of installing an electronic device when there was lawful authorization to make the installation. Mr. Fox did not think that the warrant authorizing the installation of devices authorized an individual to examine files, documents, etc. found in the premises (Vol. 163, pp. 24969-70). He said that, as far as he was concerned, when he gave authority for someone to undertake electronic surveillance, the authority was only for electronic surveillance (Vol. 163, p. 24970). He felt that the warrants he issued should have been read and interpreted in a restrictive fashion (Vol. 163, p. 24970). Mr. Fox told us that, when the matter was raised with him early in 1977, he asked Mr. Tassé to obtain a legal opinion from the Department of Justice to see whether, on entering for the purpose of placing an electronic surveillance

device, the R.C.M.P. could undertake other types of interceptions of documents, such as reading the documents, copying them or photographing them (Vol. 163, p. 24970). Mr. Fox said he received an opinion to the effect that the words "interception of communications" in the Official Secrets Act could apply to the interception of not only oral communications, but also written communications (Vol. 163, p. 24971). Mr. Fox did not think, however, that interception of written communications included removing documents in order to photocopy them and then returning them. However, he said it was proper to photocopy documents on the premises (Vol. 163, p. 24971).

49. Mr. Dare confirmed that he discussed with Mr. Fox the use of entries for the purpose of installing devices as an opportunity for the examination and photographing of documents (Vol. 125, p. 19600). Mr. Tassé also confirmed that there had been that discussion in early 1977 (Vol. 156, pp. 23803-4). He said that the issue was then considered and the conclusion was reached that if the Security Service wanted to look at documents, the warrant should be modified to say so (Vol. 156, p. 23820). Mr. Tassé said also that it was not indicated that intelligence probes were used, or that in executing a warrant under section 16 of the Official Secrets Act the police could take possession of documents and remove them to photograph or analyze them and then to return them (Vol. 156, p. 23810).

Conclusion

50. Mr. Fox, before the establishment of our Commission of Inquiry, relied on the opinion of the Department of Justice that a surreptitious entry was lawful when it was for the purpose of installing a listening device and the installation was authorized under the 1974 legislation. As we have seen, that opinion has been re-asserted more recently, and whether it is valid is uncertain.

51. As for "rummaging" while on premises to install an authorized listening device, when he found out that this went on, he obtained an opinion from the Department of Justice that written communications could be searched for, examined and copied.

CHAPTER 2

ELECTRONIC SURVEILLANCE

1. In our Second Report, Part III, Chapter 3, we discussed institutionalized wrongdoing in the field of electronic surveillance. Here we examine the knowledge and response of Ministers and senior government and R.C.M.P. officials in this area of operations. Because of the different legislation applicable to electronic surveillance in the two branches of the R.C.M.P., we discuss each branch separately.

A. SECURITY SERVICE

2. Over the years the Commissioners of the R.C.M.P. and Directors General of the Security Service have been aware of the use by the Security Service of all forms of electronic surveillance. An opinion of the Department of Justice was given in 1954 that telephonic interception could be undertaken by virtue of a warrant issued under section 11 of the Official Secrets Act. From 1969 until July 1974, when the present legislation came into effect, the Solicitors General knew of telephone tapping, and indeed gave their approval to the issuance of warrants under section 11 of the Official Secrets Act. The Ministers also approved monthly certificates reviewing existing warrants. They were also aware of the use of microphones, although Ministers did not have anything to do with that technique of eavesdropping until Mr. Goyer instituted the practice of being informed monthly about it. Since 1974, the use of both techniques has been subject to section 16 of the Official Secrets Act, and Commissioners, Directors General and Solicitors General have all participated in the perfectly lawful process of issuing warrants. They have also been aware, in the case of microphone installations, that in many instances, an installation can be made only by entering private premises without the consent of any person who could give permission to do so. We noted in our Second Report that such entries may give rise to a legal issue, but that the R.C.M.P. and the Solicitors General have acted under the advice of the Department of Justice, given when the legislation was being drafted and since the early months of its operation, that such entries are legal.

B. CRIMINAL INVESTIGATION BRANCH

3. In our Second Report, Part III, Chapter 3, we reported that in the criminal investigation work of the R.C.M.P., the policy from 1959 onward forbade the use of telephone tapping. This was so until the Protection of Privacy Act came into effect on July 1, 1974. Although the last written policy dealing with

electronic surveillance issued on January 1, 1973 was silent as to telephone tapping, the evidence is clear that the policy against wiretapping continued until the Act came into force. We also reported that Commissioners advised Solicitors General in 1966 and 1968 that R.C.M.P. policy forbade wiretapping in criminal investigations.

4. Throughout the greater part of the 1960s the policy against wiretapping seems to have been rigorously enforced by Headquarters. An incident in Montreal in 1964 illustrates this. Two senior officers were dismissed from the Force for misapplication of public funds designated for the payment of informers. It came out in the service investigation and trial of the senior officers that the funds had not been used for the payment of informers but for the acquisition of wiretapping components and equipment. The Commissioner reported to the Minister of Justice that the use of this equipment was completely contrary to the policy of the Force. The files show that the equipment was impounded and subsequently destroyed.

5. Prior to 1974 there was, except in Alberta and Manitoba, no legal prohibition against wiretapping, and the reluctance of the R.C.M.P. to embark on the use of this technique for criminal investigations stems from internal policy considerations. An important factor was that the Security Service, which used wiretapping, was anxious to protect its technical operations, many of which were of a long-term nature. Assistant Commissioner Venner explained that:

the Security Service and the people who had their responsibilities perhaps uppermost in mind were concerned that the C.I.B. entry into this field with the obvious ramifications of that — taking the evidence to court, in some cases — would raise the profile of this technique to the detriment of the Security Service.

(Vol. C123, p. 16223.)

This reason can be found stated in a memorandum dated March 26, 1968, from Sergeant D.A. Cooper to the Officer in Charge of the C.I.B. (Ex. E-5). He said: "... the Commissioner forbids telephone tapping for criminal investigations, the main reason being to protect the responsibilities of "I" Directorate". Commissioner Higgitt told us that the protection of Security Service operations was an important reason for the C.I.B. policy (Vol. 199, p. 29496). This concern of the Security Service diminished somewhat as time went on and by June 12, 1973 the Solicitor General in testimony before the House of Commons Standing Committee on Justice and Legal Affairs did not hesitate to refer publicly to the use of wiretapping in security work.

6. It should also be noted that during the period when wiretapping legislation was in preparation the R.C.M.P. was reluctant to authorize wiretapping in criminal investigations since this might produce a public reaction adverse to the R.C.M.P. In our Second Report we said:

Nevertheless, these senior R.C.M.P. officers wanted the use of this investigative aid to be kept out of the public eye as much as possible, particularly as they had hopes of obtaining legislation that would permit the use of wiretapping by warrant, and they feared that public exposure might prejudice the enactment of the legislation.

We based this conclusion on the testimony of Assistant Commissioner T.S. Venner. He testified before us in April 1978:

Q. Did you have any discussions with your superiors as to the reasons why the policy remained that there shall be no telephone tapping, notwithstanding the opinions that in most circumstances no offence would be created, even an offence under the Petty Trespass Act; did you ever have any discussions as to why they wanted it maintained?

A. Yes, many such discussions, sir.

Q. What was your conclusion as to the reason for maintaining the policy, in spite of the opinions that they had with respect to law?

A. At that period of time, the legislation was impending, and I think it was accepted, rightly or wrongly, within our Force that we would stand a better chance of getting favourable legislation, or not jeopardizing the passage of what we believed to be favourable legislation, if our policies remained the same, if they remained prohibitive with respect to wiretapping. But I might say these decisions were taken by people from whom our activities were withheld in the field.

(Vol. 33, pp. 5452-3.)

The conduct of Assistant Commissioner Venner

7. In our Second Report, Part III, Chapter 3, we discussed the evidence of Mr. Venner with respect to wiretapping in Toronto in 1973:

19. It is clear that the policy enunciated by Headquarters, and the assurances given so positively to government that telephonic interception was not permitted, were somewhat meaningless. Assistant Commissioner T.S. Venner testified that in "some areas" R.C.M.P. investigators "simply relied on their local, municipal and provincial police counterparts to do this work for them". In other areas,

... our policy was held to be just a guideline, and key personnel, when operational circumstances warranted it, went ahead with the necessary activity, either not reporting it at all, reporting it only up to certain levels or reporting it in an incomplete, less than fully informative fashion.

(Vol. 33, p. 5404.)

One such area was "O" Division (Southwestern Ontario), to which Mr. Venner was transferred from Edmonton in the summer of 1973. Put more bluntly by him, the fact that telephone tapping was being carried on in the field was "withheld" from senior officers of the Force who were responsible for the policy and were assuring Parliamentary Committees that there was no wiretapping for criminal investigation purposes (Vol. 33, p. 5453). Indeed, in those areas where the policy was ignored in practice, the R.C.M.P. now recognizes that the telephone tapping was "carried on in an atmosphere of non-accountability, fear of discovery, even deception".

(Vol. 33, p. 5407.)

20. Mr. Venner told us that when he moved from Alberta to Toronto in 1973 as Officer in Charge of the Criminal Intelligence Division

It also became apparent that telephone tapping was going on, was being conducted by our criminal investigators, and to a very high degree it also became apparent that this was an underground activity, that it was not

being reported, that information as to the character and extent of our technical activity was being withheld from superior officers, and the people who were doing it were people who became immediately subordinate to me as soon as I arrived there.

(Vol. 33, p. 5440.)

So, after examining the situation, he concluded that it was "impractical" not to tap telephones, "policy notwithstanding". Although it was "clear" to Assistant Commissioner Venner that in 1973 "it was still a policy of the Force not to wiretap" (Vol. 33, p. 5454), he considered the policy to be

... a guideline to be followed wherever possible, but when it was just not practical to live within that policy, and where there was a greater public interest, in my assessment, at stake, then telephone intrusion would form part of our electronic surveillance program.

(Vol. 33, p. 5441.)

He was aware not only that the practice was contrary to Force policy, but that, in the small percentage of cases in which it was necessary to enter premises in order to tap a telephone, there was ("at most") a violation of the Ontario Petty Trespass Act and possibly civil trespass.

(Vol. 33, pp. 5441-44.)

21. This attitude was not restricted to Southwestern Ontario. In a letter to the Solicitor General on October 6, 1977, Commissioner Simmonds wrote

Efforts to have our policy changed met with no success for a variety of reasons and it became evident that there was a wide range of interpretation being applied with respect to the prohibition against telephone tapping. In some areas, our investigators simply relied on their local, municipal and provincial police counterparts to do this work for them. In other areas, our policy was held to be just a guideline, and, key personnel, when operational circumstances warranted it, went ahead with the necessary activity either not reporting it at all, reporting it only up to certain levels or reporting it in an incomplete, less than fully informative fashion. In some other areas, the policy was rigidly adhered to, occasionally because local enforcement programs were sufficient without this investigative aid, but more often because the policy and public pronouncements by the Commissioners were held to be an absolute bar to telephone tapping in the investigation of criminal matters. I think it is fair to say that where this interpretation existed and was applied, telephone tapping simply continued in an "underground" fashion and our previously high standards of accountability became subject to violation. The damage this did has not yet been fully repaired.

(Vol. 33, pp. 5404-5; Ex. E-5.)

8. It has been represented to us that it is unfair to comment on Mr. Venner's conduct in Toronto in 1973 since the evidence was supplied by Mr. Venner himself when he put himself forward in April 1978, as the present Director of Criminal Investigations, to testify as to the history of the policy on this subject, and in particular when he was asked by our counsel to tell what had happened in Toronto. Our counsel's question (Vol. 33, pp. 5439-40) was a request that Mr. Venner elaborate upon the statement that had been contained in Commissioner Simmonds' letter that there had been misleading reporting and that information had been withheld from superiors.

9. We recognize that, in a sense, it is unfair that Assistant Commissioner Venner should be commented upon if there were other officers who were doing the same thing but are not named in this Report. Nevertheless, we cannot be expected to refrain from commenting on conduct which is known to us merely because others, unknown to us, may have done the same thing.

10. We do not believe, however, that Assistant Commissioner Venner intended to mislead Headquarters or contribute to misleading the Solicitor General or the Justice and Legal Affairs Committee. We accept his assurances, given under oath, that he tried to get the wiretapping policy changed. He made written submissions "pointing out our difficulties and asking for changes", some of which "got to Headquarters" while others did not get beyond the sub-divisional or divisional level. He says that

in one way or another, and, in fact, in every way I could, I attempted to get this policy changed and to bring to the attention of Headquarters the difficulties that it was causing us in the field and the effect it was having on our character and the fabric of the Force, really.

(Vol. C123, p. 16191.)

Nonetheless, the evidence is that in 1973 he permitted wiretapping operations in Toronto to continue and he did not report the true state of affairs to his superior officers.

11. Assistant Commissioner Venner says that by 1973 there was a decline in leadership standards and that this was "primarily because of the atmosphere created by this policy, that most criminal investigators couldn't live with" (Vol. C123, p. 16190). He described to us a very serious state of affairs:

There were many officers in this Force who simply did not want to know the problem existed. They wanted to shut their eyes and tell them to go away. They did not want people to tell them that this practice was going on in criminal investigation. Because then they would be possessed of knowledge, which they would either have to do nothing about, and thereby accept the responsibility, or do something about; and many of them did not want to do either. So, there was an atmosphere of not wanting to know what was going on.

This reporting system contributed to that and to some extent facilitated that. In both Alberta and Toronto there were officers, superior to me, in the division, who I did not want to discuss this kind of activity with. I was more prepared to discuss it with the D.C.I. in Headquarters, than I was with officers within my division, because of their own perceptions and their own personal approval to this kind of activity. It was a very unhealthy and very unsatisfactory and very disturbing situation. But that's the way it was and that is how it existed.

(Vol. C123, p. 16268-9.)

He says that the junior members who were carrying out telephone tapping had developed disrespect for their senior officers, for any officers, most of whom just were not about to get involved and to know what the practice was, and didn't want to do anything about it.

(Vol. C123, p. 16188.)

Thus,

the fabric and the character of the Force. . . was being seriously eroded.
(Vol. C123, p. 16189.)

12. Assistant Commissioner Venner considers that the proper way to interpret what he did in Toronto in 1973 is that

during a short period of time, when there was confusion and uncertainty and a very unhealthy arrangement within the Force with respect to policy in this area [he] took it upon himself to do some reasonable, thoughtful, sensible things to bring an acceptable practice under control; that [he] lived with and worked within a reporting system which may not have been fully informative — it may not have been deceitful, but it may not have been fully informative or complete — that reporting system may have allowed some people at Headquarters to be misled.

(Vol. C123, pp. 16231-2.)

He explained that his motive was to bring a measure of accountability (to himself) and control to what he found was going on in "an underground fashion, uncontrolled" (Vol. C123, p. 16181). He found that the fact that telephone tapping was used at all was withheld from the officers of "O" Division in Ontario and that "no officer was overseeing the programme, to see this technique was only used when it was absolutely necessary" (Vol. C123, p. 16182). Misleading reporting practices were being used to camouflage telephone tapping operations (Vol. C123, p. 16188) and he found that members who carried out telephone tapping "hid it from their superiors", resulting in "a very, very dangerous climate of deceit, really, and lack of accountability" which "was growing up in the C.I.B. side of the Force" (Vol. C123, p. 16181). He considers that had he "religiously tried to stamp it out", it "would have continued in an underground fashion" (Vol. C123, p. 16185). He recognizes that the policy was regarded as a very significant one in that he was aware, when he arrived in Toronto and before that, as were "all of our criminal investigators", that "if a criminal investigator was caught in this procedure, caught telephone tapping, he would lose his job" (Vol. C123, p. 16187).

13. Indeed, he considers that, far from his conduct being unacceptable, it would have been unacceptable "to have done nothing about the situation, other than to allow it to continue, or drive it further underground with repressive action of my own". He says that he did his duty —

my duty as I perceived it, to the Force, in many ways, and to the younger members of the Force in particular.

(Vol. C123, p. 16189.)

14. Here it is disturbing to note than an officer perceives his "duty to the Force" as being distinct from his duty to obey the policy of the Force. We reject the concept that there is some overriding duty to the Force that may be invoked by members as a reason for disregarding a policy decided upon by senior management or by the Solicitor General, no matter how unreasonable members consider the policy to be or whatever adverse consequences they may perceive the policy to have for the "fabric" or the "character" of the Force.

15. We recognize that Mr. Venner was in a most difficult position when he arrived in Toronto and found that wiretapping was going on in an "underground fashion". The evidence before us makes it clear that the official policy of the Force was not to engage in wiretapping. It is therefore hardly surprising that certain superior officers in Divisions, such as Mr. Venner's own superior in Toronto, were insisting on strict compliance. However, it is equally clear that senior officers on the C.I.B. side of Headquarters were aware, at least by the fall of 1972, that the policy was often not being observed in the field. Not only were they aware of this, but they did nothing about it. The policy was not changed, neither were attempts made to bring practice into line with policy. In this state of affairs it is understandable that Mr. Venner found it easier to discuss the situation with Headquarters managers than with officers in the field. It was a situation in which the management of the Force had broken down as far as this question was concerned.

16. Commissioner Simmonds testified on this matter and stated that in his view Mr. Venner dealt with "a very difficult problem in a very responsible way", and described his own experience as an officer in the field. We have given careful consideration to his representations.

17. We recognize that Mr. Venner volunteered the information about his own experience to our counsel and to us, and for that we give him credit. Yet, when all is said and done, one fact remains. It was Force policy that the technique of wiretapping was not to be employed in criminal investigations. Those who did not obey that policy may have done so for a noble motive, but their conduct cannot be excused, for that road can only lead to loss of control and breakdown of authority within the Force.

The conduct of Deputy Commissioner Nadon

18. On August 8, 1972, Mr. Nadon asked the C.I.B. to prepare a background paper on the wiretapping policy which would assist in consideration of changing the policy. By October, a paper was prepared entitled "Wiretapping Policy" (Ex. E-5). It was prepared by senior non-commissioned officers at Headquarters who were in the Drug Section, the National Crime Intelligence Unit, the Commercial Fraud Section and the Legal Branch. This brief, intended for internal use only, was circulated to the officers in charge of the C.I.B. branches at Headquarters, who so far as Mr. Nadon knows, did not dissent from its contents. It was then submitted to Mr. Nadon. The brief traced the history of wiretapping policy from the 1930s and recommended a change of policy. The passages of particular importance to us are as follows:

Introduction [p. 1]

Our official policy concerning wiretapping is perfectly clear. For many years we have consistently forbidden our members to use this method of investigation, and consistently denied that we have ever done so....

It is painfully clear that mere perusal of the materials on file would be entirely misleading to anyone not familiar with reality in this area — that official policy has never been followed despite assurances to the contrary.

This brief is presented in a conscious effort to "tell it like it is" — to go beyond the mere commission to extract and summarize (although this has been accomplished to some extent) and permit conclusions and recommendations based on existing realities...

Enabling legislation [p. 7]

...With the dissolution of Parliament in July Bill C-6, the latest in a series of Bills on wiretapping, died after coming closer to passage than any of its predecessors. While we directed our usual representations to Justice, we were conspicuous by our absence at the stage when briefs were presented to the Justice and Legal Affairs Committee. Our present policy effectively prevented us from visibly using our prestige in support of other police agencies. We did not dare risk questioning which could reveal the abyss between policy and practice.

Effects of present policy [p. 9]

It can be unequivocally stated that our members do in fact tap telephones in the face of official policy to the contrary, directly, and indirectly through the medium of other police agencies and telephone companies. The basic reason for this is that the Force, quite properly, expects its members to produce investigative results, and unofficial policy at the working level condones or encourages wiretapping as a medium. A second reason is that members often become so dedicated to their tasks that they are willing to use any means available to accomplish them as long as the means is not personally repugnant, even to the point of jeopardizing their careers.

The justifications for the assertion that our members do tap telephones are these:

- (1) personal knowledge on the part of many members, even though they are compelled to deny it officially
- (2) common knowledge within the Force
- (3) cases developed into the higher levels of serious and organized crime where it is obvious traditional investigative methods could not be responsible
- (4) recurring questions from members attending courses concerning the consequences if they are caught.

Why our policy should be changed [p. 12]

...

- (2) to bring policy into line with practice

...

- (6) to permit representatives of the Force to appear before the Justice and Legal Affairs Committee and attempt to influence prospective legislation.

...

19. It is clear that those who prepared the brief thought that, so long as the policy was not changed, any senior officer of the Force, if he appeared before the House of Commons Standing Committee on Justice and Legal Affairs, would have to disclose that members of the Force violated policy broadly, and

that this might cause such consternation as to imperil the prospects of the adoption of legislation which would, if adopted, clearly permit wiretapping by the police.

20. On November 8, 1972, Mr. Nadon wrote to the Director of Criminal Investigations that he had "perused this excellent study on wiretapping" and suggested that some minor changes be made before it was put in final form for discussion with the Commissioner.

21. A different paper highlighting the basic objections of the R.C.M.P. to the Protection of Privacy Act was prepared about this time for the information of the Solicitor General. On December 18, 1972, that paper was sent by Mr. Nadon to Mr. Bourne, the Head of the Security and Policy Analysis and Research Group in the Department of the Solicitor General (Ex. E-7). In this document the following passages on the wiretapping policy appear:

The policy on telephone tapping is that it will not be used in the investigation of criminal matters except when one of the parties agrees to such action and there is no prohibitive legislation....

Since the policy of the RCMP forbids wiretapping in the investigation of criminal matters, we cannot speak directly of our own cases when relating positive results from investigations wherein wiretapping has been utilized. We have, however, been involved in several joint forces operations with other police departments who do wiretap with the sanction of their superiors.

It will be noted that the paper sent to the Solicitor General's office did not refer to requests having been made by members of the R.C.M.P. to telephone companies for wiretaps, or to members installing wiretaps themselves, or to members asking other police forces to carry out wiretaps for the R.C.M.P. Moreover, Mr. Nadon cannot say that in discussions with the Solicitor General, Mr. Allmand, concerning the Protection of Privacy legislation, the existence of these possibilities was raised by the R.C.M.P. He has no memory of having told Mr. Allmand that he suspected that in some cases members were not abiding by the policy that prohibited wiretapping. (Vol. 199, pp. 29394-99).

22. Mr. Nadon told us that he sent the internal brief to the Commissioner on December 22, 1972. Mr. Nadon's internal memorandum to the Commissioner dated December 22, 1972 states in part

This is the brief on wiretapping recently discussed. It is very detailed tracing history of C.I.B. involvement from the 1930s to date and a number of problems encountered on the way. Having lived through most of these problems while in the field I am most sympathetic to members concerned. After careful study of this and additional ammunition from south of the border I agree that it is time to have a good look at our present policy....

Later, according to Mr. Nadon, on January 10, 1973, a discussion was held with the Commissioner and the D.C.I. and the Commissioner decided that the R.C.M.P. policy on wiretapping should not be changed, as to do so might adversely affect the R.C.M.P. position on the wiretapping legislation.

23. In January 1973, the October 1972 internal brief was discussed at a meeting of divisional Commanding Officers in Ottawa. On January 26 Mr. Nadon sent the brief to the Commanding Officers of the Divisions in several of the provinces where the R.C.M.P. is the contracted police force. Mr. Nadon does not recall having received any comments from those Divisions that the brief presented the facts inaccurately (Vol. 199, p. 29364; Ex. E-5).

24. Mr. Nadon told us that "as far as [he] knew, the policy was established, was being generally observed throughout the Force. Now, there may have been the odd exception, but not an abyss..." as claimed in the internal brief of October 1972 (Vol. 199, p. 29335). He testified that, from the statements made in the brief, he "suspected that some of our members . . . were going out on their own and doing some wiretapping; but not on a general basis right across the country. On the exceptional basis." (Vol. 199, p. 29336-7). According to Mr. Nadon, "it certainly was not common knowledge at Headquarters, at the executive level", that members were tapping telephones (Vol. 199, p. 29337). He says that he thinks that the statement made in the brief, that "Present policy has never been followed in the larger crime centres", was "generalized" and that disobedience was "not as widespread" as the brief indicated, but was, he would say, by "very few members in each of the divisions" (Vol. 199, p. 29344). He told us that his views were formed from being in a division and from what he had heard at Headquarters. His experience in Toronto, Vancouver and in Montreal told him "that there was very little [wiretapping] going on, if any" (Vol. 199, p. 29351).

25. Despite the October brief's "unequivocal" statement as to practice, which to Mr. Nadon meant that the NCOs who prepared the brief "could certainly come up with certain incidents where it was done and it is unequivocal that it did occur" (Vol. 199, p. 29348), Mr. Nadon did not inquire as to whether there were grounds for the statement in the brief (Vol. 199, p. 29354, 29436). He told us that his efforts were directed toward getting the legislation passed, and that anyway he thought that members of the Force who submit a brief "pad" their version of the facts so as to impress the senior executive in favour of a change in policy (Vol. 199, p. 29345). By this he says he means that they use exaggerated terminology to describe the facts (Vol. 199, pp. 29346-50). He says that he considered that widespread wiretapping could not be "commonly known" to the NCOs who prepared the brief because wiretapping would be carried out on a need-to-know basis (Vol. 199, p. 29348, 29420). He testified that he thinks "that the people that actually wrote these things probably did not have the knowledge of the specific — so they are just writing on hearsay..." (Vol. 199, p. 29421). Yet, the "unequivocal" nature of what was stated did make him "suspect" that members tapped telephones in contravention of official policy, and that their doing so might be "a little wider spread" than he had originally suspected, although he says that he did not suspect that it was "a wide disrespect for the policy". He says he thought that it was just the odd case that may have occurred over the years (Vol. 199, pp. 29438-9). Mr. Nadon clearly had no intention of investigating on the basis of such suspicion — he would investigate only in the unlikely event that he received a complaint of wiretapping from a court or the public (Vol. 199, pp. 29348-9).

Then he said, he would have to take some action. As it was, however, he did not think it necessary to ask for particulars of the alleged wiretapping.

26. It may be noted that a review of R.C.M.P. files shows that on May 4, 1971, a Chief Superintendent in the C.I.B. at "K" Division in Alberta had written to the Director of Criminal Investigations. The message (Ex. E-5) was titled "wiretapping". It said:

I again reiterate that members of this Force do not wiretap but over the past few months if a need arose where wiretapping was mandatory, this would be surreptitiously done by [name of a person in the employ of a telephone company].

The reference was to Calgary, where, as in all of Alberta except Edmonton, there was a statutory prohibition of wiretapping. Hence, this message informed Headquarters not only of violation of Force policy but of illegality. We note this as an example of Headquarters being given very specific information about wiretapping contrary to policy. Mr. Nadon had no recollection of this correspondence.

27. On June 12, 1973, the Solicitor General and Mr. Nadon appeared before the House of Commons Justice and Legal Affairs Committee. A written brief had been prepared by the R.C.M.P. for the Committee and was left with the Committee on June 12, 1973. The brief stated:

The Royal Canadian Mounted Police do not tap telephones in the investigation of criminal offences UNLESS: (a) the consent of one of the parties to the conversation has been obtained; and (b) wiretaps are not prohibited by legislation in the jurisdiction in which the investigation is being undertaken...

The members of the Committee at its hearing that day exhibited repeated interest in the policy and practice of the Force as to wiretapping — i.e. tapping of telephone conversations. The transcript records the following:

(p. 12.)

Mr. Leggatt [M.P.]: O.K., then with regard to actual taps, were any of your taps done on lawyers' telephones?

Mr. Allmand: On the criminal side you do not tap.

Deputy Commissioner Nadon: Well, bugs or whatever you want to call them. No, we do not do any wiretapping.

Mr. Allmand: The espionage side does and Mr. Draper is here to answer on espionage.

...

Mr. Atkey [M.P.]: On a point of order, Mr. Chairman, I think the Minister did say that with the consent of one of the parties they did do wiretaps in criminal matters.

Mr. Allmand: It is very, very rare.

Deputy Commissioner Nadon: Very rarely.

(p. 14.) (Translation)

Mr. Olivier [M.P.]: If you do prevention, do you use wiretapping (telephonic interception)?

Deputy Commissioner Nadon: Not wiretapping. (Pas du téléphone)

Mr. Olivier: You do not use it at all?

Deputy Commissioner Nadon: Not for the criminal side.

(p. 15.)

Mr. Allmand: M. Olivier, the R.C.M.P. would say this very strongly that, although they have not used wiretapping in criminal matters, they recognize that it would be very useful to them because they have seen the other police forces use it, and so on.

Mr. Olivier [our translation]: I would very much doubt that one can say that this has never been used for criminals. What is the R.C.M.P. for?

Mr. Allmand: I am telling you that they tell me that they have not used this wiretapping in criminal matters.

Mr. Prud'homme [M.P.]: And you take their word?

Mr. Allmand: What else could I do?

(p. 34.)

Mr. Allmand: ... The reason why wiretapping has not been used by the criminal side of the R.C.M.P. is that there were, in our opinion, over the years certain restrictions...

(p. 36.)

Mr. Blais [M.P.] [translation]: However, in view of the fact that you never used wiretapping in the course of your investigations in the criminal field, when you will be allowed to do so, it will mean for you an additional weapon.

Mr. Nadon: That is correct.

28. Mr. Nadon considers that the answers he gave were correct, as far as he was concerned. As to why he did not refer even to those exceptions that were permitted by policy (other than consensual interceptions), he explained to us: "I thought to answer the question as briefly as possible, without going into too many details... I think we wanted to get the hearing over..." (Vol. 199, pp. 29433-34).

29. When asked by our counsel why he did not tell the Committee that the R.C.M.P. was not only receiving information from other police forces but was requesting other police forces to conduct wiretaps, Mr. Nadon replied: "Because it was not a common practice..." even though he recognized that such was permissible within the policy of the Force (Vol. 199, p. 29417-18).

30. As to whether there were any exceptions to the statements he made to the Committee, Mr. Nadon considers that the onus rested on the members of the Committee to ask "Now, does it happen on occasion" — and if that question were asked, the answer given would be "Yes, it could happen on occasion and they would be disciplined" (Vol. 199, p. 29427).

31. We are satisfied that, when Mr. Nadon appeared before the Justice and Legal Affairs Committee on June 12, 1973 he knew at the very least, that according to a brief prepared by responsible members of the Force only a few

months earlier, it could "be unequivocally stated that our members do in fact tap telephones in the face of official policy to the contrary, directly, and indirectly through the medium of other police agencies and telephone companies". In view of the responsibilities of the drafters of that statement, and its apparent acceptance as accurate by sections at Headquarters and divisional commanding officers, and Mr. Nadon's own November 8, 1972, memorandum commending it as an excellent study on wiretapping, we cannot accept Mr. Nadon's contention that the brief gave rise only to suspicion on his part that wiretapping was a "little wider spread" than he had thought and that he "believed" that it happened only rarely. However, even if we were to accept as fact that Mr. Nadon was led only to "suspect" that it was a "little wider spread", he had a duty to find out from those who prepared the brief just how accurate the statement was. He did not do so, and we regard the reason he gave us for not doing so as both convincing and unconvincing. It was convincing to the extent that we are sure that, as he told us, he had his eyes set on getting the impending legislation adopted. As he told us, he did not want to "rock the boat". We are satisfied that this meant that he did not want to disclose to the Solicitor General or to the Justice and Legal Affairs Committee that there was (or even that there might be) widespread wiretapping by members of the Force. For to do so would clearly have upset Mr. Allmand and run contrary to assurances that had been given to Mr. Allmand and his predecessors. The reason he gave us was unconvincing because it was extremely unlikely that a court or member of the public would complain about wiretapping; it was illegal in only two provinces, and members of the R.C.M.P. called as witnesses in court were encouraged and briefed to avoid disclosure of all forms of electronic eavesdropping to the court. This is vividly explained in correspondence from Edmonton in 1973 mentioned by Mr. Venner in his testimony before us which makes it clear that members would go to some lengths to avoid disclosing the product of such eavesdropping, even to Crown counsel (Ex. E-8).

32. There is one situation which Mr. Nadon knew was permitted by Force policy even in the absence of a joint forces operation — that members of the R.C.M.P. could ask another force to do a wiretap for the R.C.M.P. He did not disclose this to the Committee. The written R.C.M.P. presentation to the Committee contained only the following somewhat ambiguous reference to co-operation with other police forces.

There are circumstances in which audio surveillance is undertaken in partnership with other major Canadian police forces on what is termed 'joint forces operations'.

33. Whether Mr. Nadon knew or only suspected that there was more than occasional wiretapping beyond what was permitted by Force policy, he ought to have qualified the assurances to the Justice and Legal Affairs Committee given in the brief to the Committee and in his own answers to questions. His failure to do so misled the members of that Committee, just as the brief sent to the Department of the Solicitor General on December 18, 1972, misled that Department. The misleading was intentional. This was unacceptable conduct. Both the Solicitor General and members of Parliament are entitled to receive accurate and candid information, and it is inconsistent with the needs of

responsible government and parliamentary democracy that the R.C.M.P. would refrain from candour and completeness on the ground that if the right question is asked (by people who may well not, on the spur of the moment, think of the "right question") it will then be answered, but otherwise the information need not be given.

The conduct of Commissioner Higgitt

34. Mr. Higgitt was Commissioner from October 1, 1969, to December 28, 1973. Before that his experience had been largely in security and intelligence work. He testified that he was not aware that on occasion members of the R.C.M.P. in the investigation of criminal offences tapped telephones directly or obtained an installation through the co-operation of the telephone company. On April 20, 1972, at a meeting of the Justice and Legal Affairs Committee when the first Protection of Privacy Act was being considered (before it died on the order paper), the transcript discloses the following question and answer:

Mr. McGrath [M.P.]: Does the R.C.M.P. conduct wiretapping? Do you tap phones in the course of your responsibilities?

Commissioner Higgitt: No. As a matter of fact, in so far as our law-enforcement operations are concerned, we do not. I want to be very clear in this. We do not tap telephones.

35. Mr. Higgitt told us that, as far as he was concerned, he did not — until 1981, in preparation for his testimony on this point — see the internal R.C.M.P. brief dated October 1972 entitled "Wiretapping Policy". Later he told us that he has no memory of ever seeing the brief (Vol. 199, pp. 29499-500). As for Mr. Nadon's longhand transit slip addressed to "the Commissioner" dated December 22, 1972, which began "This is the brief on wiretapping recently discussed..." and which clearly referred to the October brief, Mr. Higgitt drew to our attention that on December 22, the last working day before Christmas, "nothing of any great importance would probably have come" to him, and the transit slip does not bear the kind of notation by him which it was his custom to make on such a document when received or read by him (Vol. 199, pp. 29500-501).

36. As against Mr. Higgitt's lack of memory of ever having seen the October 1972 brief, we have the following documentation by Mr. Nadon: (i) His longhand transit slips dated August 8, 1972 and November 8, 1972, to the Director of Criminal Investigations which referred to the drafting of the internal brief. Both of these refer to discussing the question with the Commissioner when the brief is ready. (ii) His longhand transit slip to "the Commissioner" dated December 22, 1972, already referred to. (iii) A longhand memorandum for file dated January 10, 1973, which read, in part: "Discuss with Commr. and D-C-I on 10/1/73. Commr. fears a request to Minister to change our policy at this time when legislation is being considered will trigger a negative reaction from Minister, who is in favour of Bill presently before House..." (The memorandum then referred to the dangers of the Bill and concluded: "Our recommendation now is for C.O.s to approach AGs discreetly

on subject, attempt to get their support and if successful let us know so we can use as ammunition to make a presentation to Minister for a change of policy.") (iv) His letter to five divisional C.O.s dated January 26, 1973, which stated: "The Commissioner is presently examining the material that has been prepared..."

37. On May 24, 1973, Mr. Higgitt appeared before the Justice Committee in regard to the Bill on Protection of Privacy. The following appears in the transcript:

Commissioner Higgitt: . . . There was a question a moment ago . . . you said: does the force use wiretapping?

Mr. O'Connor [M.P.]: Yes.

Commissioner Higgitt: My answer to that question is no.

Mr. O'Connor: It does not.

Commissioner Higgitt: My answer is no.

Mr. O'Connor: So that to get a categorical answer you are saying that the force does not employ wiretapping methods in the course of investigation of crime in Canada, other than the question of security, and we have agreed that I will not delve into it.

Commissioner Higgitt: The answer to that is a direct no.

It will be noted that Mr. Higgitt's answers were in no way qualified, even to the extent of mentioning that Force policy permitted it to receive from other police forces the product of wiretaps made by those forces. Mr. Higgitt told us that he supposed he did not mention that because "it wasn't the question that was asked me" and because "I suppose it did not occur to me" (Vol. 199, p. 29553, 29556). In addition, of course, he did not qualify his answer by referring to the areas in which, according to the October 1972 brief, policy was being violated.

38. We are satisfied by Mr. Nadon's memoranda and letter already mentioned, that Mr. Higgitt did receive the October 1972 brief and his memory in that regard is inaccurate. We believe that Mr. Higgitt's answers to the Justice Committee were misleading and lacking in candour, and that he deliberately refrained from telling the members of that committee of the "use" by the R.C.M.P. of the product of wiretaps by other police forces and of the "use" by the R.C.M.P. of the methods described in the October brief.

39. We are satisfied that Mr. Allmand was never told that members of the R.C.M.P. in the field were using wiretapping by making taps themselves or by asking members of telephone companies to make them. We are also satisfied that Mr. Allmand was not even told of the policy that permitted members of the R.C.M.P. to ask members of other police forces to tap telephone conversations. He testified to his not being told of any of those matters. Mr. Higgitt did not suggest that he had told Mr. Allmand any of those things (indeed, Mr. Higgitt could not have testified that he did, for Mr. Higgitt denied knowing of the first two and could not remember the third). Mr. Nadon testified that he could remember no occasion when Mr. Allmand was told of these matters.

Consequently, our conclusion is that Mr. Allmand did not know of those matters and had no reason to suspect them, the R.C.M.P. having given him the same kind of assurances that were given later to the Justice and Legal Affairs Committee.

Lobbying

40. Another issue arises from the steps taken by Mr. Nadon to discourage the inclusion in the Protection of Privacy Act of provisions to which the Force was opposed. When Mr. Nadon, on January 26, 1973, sent the October brief to the Commanding Officers of Newfoundland, Saskatchewan, Nova Scotia, New Brunswick and Prince Edward Island Divisions for their comments and suggestions, his letter referred both to the legislation then before Parliament and to the possibility of changing Force policy even before the legislation was passed. The letter continued:

The Commissioner now considers it would be timely to discreetly solicit the views of the Attorneys General concerning telephone tapping by the Force on criminal investigations within their jurisdictions. If it were possible to obtain general endorsement from Attorneys General, or a majority of them, it would certainly strengthen our proposal to the Government. Therefore, would you now personally and discreetly approach your Attorney General to solicit his views in this regard.

It then recommended that each Attorney General should be told of the limits and controls that would be maintained on the use of technique. It continued:

One Attorney General has endorsed the use of audio surveillance by the Force and extracts from his authorization are included in the attached Appendix "A". In preparation for discussion with your Attorney General, you may wish to use this as a guide.

Insofar as Federal audio surveillance legislation major effort has been made by the Force through CACP, [Canadian Association of Chiefs of Police], Justice Department, Solicitor General's office and other avenues to influence the legislation in order that it could be practically employed by Canadian Law Enforcement. As was mentioned at the COs Conference the legislation which has been drafted is certainly not entirely to our liking but we are still hopeful that it can be amended....

I should also add that the Commissioner is sympathetic to the need for this facility on certain CIB major investigations. He has, however, been placed in a delicate position in view of past events that made it necessary to adopt our existing policy. It is important, therefore, notwithstanding legislative proposals, to obtain an endorsement from the Attorneys General. Assuming a favourable reaction is obtained, this additional influence, as well as other information, will provide support to the Commissioner in making an approach to the Minister for the purpose of obtaining authorization to utilize telephone tapping under certain conditions for criminal investigations.

41. This letter clearly indicates an intention not only to obtain the views of the provincial attorneys general (to which no objection can be taken) but also to try to obtain their support for the Force's views concerning the legislation,

with the intention of placing such "favourable reaction" as might be obtained before the Solicitor General. Mr. Nadon testified that he "thinks" that Mr. Allmand "probably appreciated the fact that we did approach the attorneys general, because it also supported his position in a lot of these issues" (Vol. 199, p. 29376). Mr. Allmand, however, denied that he had been informed that the R.C.M.P. were approaching the attorneys general as indicated in Mr. Nadon's letter (Vol. 200, p. 29585).

42. We agree with Mr. Allmand that it is "not appropriate" for the R.C.M.P. to lobby provincial government officials, without the knowledge and consent of the Solicitor General, to attempt to gain support for the positions taken by the Force on matters of policy (Vol. 200, p. 29587). It is not only inappropriate, it is unacceptable. Similarly, we think that it is unacceptable for the Force, without the permission of the Solicitor General, to solicit support for its views on legislation before Parliament, from persons outside the federal government. For it to do so is improper meddling in the Parliamentary process. In our Second Report, Part V, Chapter 6, we reported that the Security Service had used the press to damage the interests of "targets" of the Security Service and we there stated that in our view such conduct is inappropriate for Canada's security intelligence agency. Similarly, here we recommend that in future, the Force, unless it has the prior consent of the Solicitor General, refrain from all such attempts to gain outside support for its views on legislation that is before Parliament, or for its views on policy matters that will be put before the Solicitor General.

CHAPTER 3

MAIL CHECK OPERATIONS

1. In our Second Report, Part III, Chapter 4, we discussed the nature of the investigative practice known as mail check operations and the legal and policy issues relating to it. Here we examine in detail the extent to which senior members of the R.C.M.P., senior government officials and Ministers were aware of, approved of, and responded to knowledge of the use of this technique and the legal and policy issues that arose from it.

A. GENERAL BACKGROUND

2. The public revelation that the opening of mail had been common practice in the R.C.M.P. came in a television broadcast on CBC-TV on November 8, 1977, during which it was stated that mail had been opened by members of the R.C.M.P. under the code name "Cathedral". By that time we had received an allegation — one of the allegations that resulted in the Commission of Inquiry being established — that members of the Security Service used two systems to obtain access to the mails. These were described as follows by the Assistant Deputy Attorney General, Mr. Louis-Philippe Landry, in a memorandum to the Deputy Solicitor General, Mr. Tassé, on June 24, 1977, after his meeting the day before with two former members of the R.C.M.P., Messrs. Donald McCleery and Gilles Brunet:

(a) When a subject under surveillance did post a letter, a surveillance officer would place in the mail box a large envelope which would be wide enough to separate all letters posted thereafter in the same mail box.

Later, through a master key held by an unidentified person, letters found under the large envelope would be removed and examined and the suspected letter copied. The letters would be replaced in the postal system within a few hours.

(b) If the system above failed or could not be used the Security Services would operate through contacts in the Post Office to obtain access to letters in the mail.

(Ex. M.154)

3. On November 9, the Postmaster General, the Honourable Jean-Jacques Blais, advised the House that:

There is no change and has not been any in the policy of the Post Office. I refer to the policy that was made in this House by Bryce Mackasey two years ago, and the one I adopted and have enforced, namely, that there is not to be any intervention in respect of first class mail or, indeed, in respect

of any regular mail unless it is authorized by the Post Office Act. This means there is no interference and no removal of the mail, save and except in certain instances where co-operation is sought by the R.C.M.P. There is co-operation provided by the Post Office relating to the covers and the information contained on said covers. At no time is the mail taken from the custody of the Post Office or diverted from ordinary mail channels.

Upon being asked by the Leader of the Opposition whether any guidelines existed regarding the conditions under which security services of the Government of Canada, under whatever heading, had the right to look at the mail or deal with the mail of a private citizen, the Postmaster General replied:

Mr. Speaker, there are no specific guidelines. What takes place is that the R.C.M.P. makes a request of the Field Officers of Security and Investigation. That request is then channelled to my Head of Security and Investigation in Ottawa. He studies the particular request and authorizes co-operation between the R.C.M.P. and postal officials. That co-operation relates to investigations being carried on by the R.C.M.P.

Again I suggest [to] the hon. gentlemen, the fact is that the investigation is conducted at the Post Office premises and it is only with reference to the cover information on the envelope.

4. Later the same day, in the House of Commons, the Solicitor General, the Honourable Francis Fox, volunteered that he had had the opportunity that morning of checking into the matter with senior officers of the R.C.M.P. and had asked questions concerning the code name "Cathedral". He continued:

The code name "Cathedral" goes back to 1954. In some instances, after my examination of the files with senior officers of the Crown, it clearly happened that the mail has actually been opened by the R.C.M.P. Security Service. Because of that, I referred the whole matter to the Attorney General of Canada and also to the McDonald Royal Commission of Inquiry.

5. Shortly thereafter, Mr. Bill Jarvis, M.P., asked the Solicitor General the following question:

In all the briefings he has bragged about so eloquently, did he never know that the R.C.M.P. may have infiltrated the Post Office? If that is not the case, did he never ask the security officers briefing him, are you or are you not contrary to the law intercepting and reading mail? Did it never occur to him to ask that question?

To this the Solicitor General replied:

Yes, Mr. Speaker, I repeatedly asked the R.C.M.P., particularly during the course of the preparation of my statement concerning the A.P.L.Q. break-in, whether there were any other illegal incidents that ought to be brought to my attention and the answer was no.

Mr. Jarvis: Will the Minister please answer the question. Did he ever ask specifically whether Security Officers were intercepting mail? That is not a general question.

Mr. Fox: Mr. Speaker, during the course of my mandate, I gave specific instructions to the R.C.M.P. when I came across the A.P.L.Q. file. As far

as I am concerned, all operations of the Force were to be carried out within the framework of the law.

Upon further questioning, Mr. Fox said:

...I sat down with senior officials of the Force this morning, asked them to produce their files, asked them a number of questions on procedural operations and it became very clear to me during the course of that meeting that there had been indeed a number of instances in which the Security Service of the R.C.M.P., in particular areas of counter-espionage, terrorism and counter-subversion, opened a number of pieces of mail. I also told the hon. member that as far as the R.C.M.P. files show, this type of procedure goes back to 1954.

Upon being asked by Mr. Allan Lawrence, M.P., whether he was assuring the House that the opening of mail had been done only in cases of alleged terrorism, alleged bombing or counter-espionage, Mr. Fox replied:

As the hon. member knows, this matter came to light only last night. I do not think our examination of the whole matter is complete. The initial response I have had from the Force, the initial breakdown of the cases which have occurred, is to the effect that they all come under the classification of counter-espionage, counter-subversion and terrorism. As far as the government is concerned, no matter what heading it comes under it is not authorized either by the Official Secrets Act or the Post Office Act, and in these circumstances, we feel that the matter has to be referred to the Commission of Inquiry set up by the federal government in view of the fact that mail has been opened, and we wish to apprise the Royal Commission of the circumstances in which the mail was opened. Hopefully, the Royal Commission will have some suggestions to make as a result of that very serious presentation.

6. On November 10, Mr. T.C. Douglas, M.P., pressed the Solicitor General as to whether his officials had lied to him and, if so, what disciplinary action he had taken. He also asked why the officials were not aware of the illegalities. He continued:

If they were not aware they are incompetent, and if they were aware of them and did not tell the Minister, they ought to be discharged.

The Solicitor General replied:

...I have already indicated quite clearly in response to other questions, and in the course of my statements in June of this year, that I expect the R.C.M.P. in all cases to bring to my attention any matters of possible illegalities in a very clear and unequivocal manner. Since the establishment of the Royal Commission, the R.C.M.P. has been in the process of preparing briefs on each one of its investigative practices and procedures, in order to bring them to my attention, first of all, and secondly to the Royal Commission of Inquiry. I think that in that regard they are being very candid... I expect the R.C.M.P. to be very candid with me and to make sure I am aware of any potential illegal problems.

7. On November 14, Mr. Lawrence, M.P., referred to the statement which had been made by the Solicitor General on June 17, 1977, that, in the words of Mr. Lawrence:

he had been assured by his security advisers there was no other illegal activity carried on up to that time by the R.C.M.P.

Mr. Lawrence continued and received replies as follows:

Mr. Lawrence: Obviously, the Security Service knew about the mail interceptions in June 1976. My question is whether the Deputy Director General of the Security Service was present at that conference the Minister had with his advisers.

Hon. Francis Fox: No, Mr. Speaker, the Deputy Director General of Operations was not present at that time. The question was put to the then Commissioner and the present Deputy* Director General of the Security Service. They had no knowledge. I have spoken with the Director General of the Security Service. I have not had the opportunity with the former Commissioner. It is quite clear the Director General of the Security Service had no knowledge of mail interceptions which led to opening of the mail.

Mr. Lawrence: Are we to assume that in June 1976 the Deputy Director General of Security Service knew of the mail interceptions but at that time and since the Director General did not know? Are we then to assume that there was a breakdown in communications at that level in the Security Service or that people simply did not tell the truth at the time of the conference with the Minister?

Hon. Francis Fox: Mr. Speaker, I do not think there is any question of people not telling the truth. The people of whom the question was asked, namely the Commissioner and the Director General of the Security Service, both replied that there were no other illegalities to their knowledge. I have no doubt that that was the case. It seems quite clear that the Director General of the Security Service was not advised of any illegal acts concerning the opening of the mail.

8. The same day, Mr. Fox reminded the House that his predecessor, Mr. Allmand, in the report which he had tabled pursuant to the Official Secrets Act in 1976, stated that:

There had been a request submitted to the Department of Justice for a legal opinion to ascertain whether an interception of the mail could be made legally under s.16(5) and the opinion received from the Department of Justice was that the opening of mail could not be legally carried out under s.16(5) of the Official Secrets Act and that s.43 of the Post Office Act took precedence over the Official Secrets Act.

Mr. Fox also advised the House that in June 1976, when mail interceptions were terminated, the Director General of the Security Service, Mr. Dare, was not aware of any case where the mails had been opened contrary to section 43 of the Post Office Act.

9. Later the same day, Mr. Ray Hnatyshyn, M.P., delivered a speech in which he stated that Mr. Allmand, in the annual reports which he gave on three occasions pursuant to the Official Secrets Act, section 16(5), respecting intercepts employed, "neglected to mention the use of postal intercepts which, considering the frequency with which they were used, shows a complete failure

*Note: Obviously from what follows Mr. Fox meant the Director General.

to exercise his responsibility to determine what was taking place in his department". Mr. Hnatyshyn said "It stretches credibility to the breaking point to believe that [Mr. Allmand] did not ask a question of his Security Service advisers, Are you collecting mail intercepts at the present?" Mr. Hnatyshyn continued:

... it is very suspicious that although the Deputy Director General of the Security Service [Assistant Commissioner Sexsmith] knew all about the mail intercepts over a year ago, the Solicitor General can contend that his officials did not mislead him nor that he misled the House as to the degree of his ministerial knowledge or responsibility.

In June 1977, the Solicitor General told the House that he had met with his officials who had told him that the A.P.L.Q. break-in was an isolated incident. Now we are asked to believe that the officials he met to discuss the question of illegalities did not include the Deputy Director of the Security Service [Mr. Sexsmith] who knew of the mail intercepts. Not only that, but we are asked to believe [Mr. Dare] did not know of the interceptions even though his immediate subordinate did. How far does the arm of coincidence stretch?

10. On November 17, the Postmaster General, Mr. Blais, was reported in the press to have said in an interview:

- (a) that district post office officials had passed on mail illegally to the R.C.M.P. for more than 40 years;
- (b) that collaboration between postal officials and the R.C.M.P. did not begin in 1954 as earlier alleged, but in the 1930s, and continued until 1976;
- (c) that it appeared that the Post Office "had lost control" because no one at the Ottawa Headquarters knew of the collaboration with the R.C.M.P.;
- (d) that the co-operation had been arranged on an individual basis with district postal officials, and that he had checked with his Deputy Minister and predecessor and neither knew of the interception;
- (e) that "the district people acted beyond their limits" in passing on the mail;
- (f) that he was "satisfied" that the interception "dealt only with matters of national security";
- (g) that certain of the Post Office's security officials who worked in district offices had been responsible, but that they were likely not the only ones who helped the R.C.M.P.;
- (h) that several of these security officers are former employees of the R.C.M.P. and the military; and,
- (i) that it appeared that no unionized workers were involved.¹

11. In the House of Commons on November 23, Mr. Blais said that:

The information we have to date would indicate that the methods varied and that the information was provided at the request of the R.C.M.P.,

¹ *Edmonton Journal*, November 18, 1977 (a Canadian Press dispatch).

primarily by people involved with security and intelligence in the Post Office and primarily without the knowledge of the regional managers and their immediate subordinates.

Mr. Blais was asked by Mr. T.C. Douglas, M.P., whether co-operation between employees of the Post Office and the Security Branch of the R.C.M.P. in violation of the Post Office Act had occurred for 40 years without either the R.C.M.P. or the Solicitor General informing Mr. Blais of that fact. To this the Postmaster General replied:

I would say there is some indication although there are no specific records, that the practice could have gone back to the late '30s. However, from the evidence I have been able to ascertain the practice was primarily during the early part of the '70s and it was at the request of the R.C.M.P. There was no knowledge in the upper echelons of the Post Office about that co-operation.

B. KNOWLEDGE OF SPECIFIC SENIOR MEMBERS OF THE R.C.M.P., SENIOR GOVERNMENT OFFICIALS, AND MINISTERS

(a) Commissioner W.L. Higgitt

Summary of evidence

12. Mr. Higgitt was questioned about a memorandum, dated November 2, 1970, from then Assistant Commissioner Parent of the Directorate of Security and Intelligence, addressed to several Commanding Officers and Officers in Charge of Security and Intelligence Branches (Ex. B-16). The memorandum stated in part:

It must be clearly understood that any form of cooperation received from any CATHEDRAL source is contrary to existing regulations.

(Vol. 84, pp. 13773-4.)

Mr. Higgitt agreed that the inference from the memorandum as a whole was that, as the Security Service was unlikely to get legislation in the near future, they would have to go ahead and use the process selectively in circumstances in which the judgment of senior officers was that it was justified. Under the terms of the memorandum, Cathedral C operations needed the approval of the Director of Security and Intelligence (Vol. 84, pp. 13774-5). This situation continued until June 22, 1973, when all Cathedral A, B and C operations were suspended (Ex. B-17).

13. Mr. Higgitt stated that over the preceding 20 or 30 years the R.C.M.P. had often made representations to various Ministers for legislation authorizing or legalizing the use of Cathedral operations. The basis of the request was the importance of access to mail, particularly in counter-espionage operations. Mr. Higgitt could not recall personally making formal application for legislation in this area, because at that time "... one had been made relatively recently and the various legal obstacles were pointed out" (Vol. 84, pp. 13777-8).

14. Mr. Higgitt testified that the recommendation of the Royal Commission on Security that examination be permitted of the mail of persons suspected of

being engaged in activities dangerous to the state had been discussed in great detail by him and his fellow officers with many Ministers, although he could not recall specific dates of discussions and could not recall discussing the particular paragraph containing the recommendation (Vol. 84, pp. 13779-80). His memory was that he had discussed the question of Cathedral with Mr. McIlraith, Mr. Goyer and Mr. Allmand. He said:

There was no secret of the fact that we were doing it [CATHEDRAL operations] and that the secret was not held from the Ministers. They were seeing the results in various forms.

Mr. Higgitt felt it fair to say that the expression "they were seeing the results" meant that the Ministers were getting reports which, when read, indicated that "unless you had X-ray eyes, somebody had been looking at the mail" (Vol. 84, p. 13781).

Conclusion

15. Commissioner Higgitt's evidence clearly establishes that, from his experience in Security and Intelligence, he was aware of the opening of mail in such work, and we believe that the effect of his testimony is that he knew it was contrary to law. That being so, his failure to stop the practice and to advise Ministers that such a practice existed was unacceptable.

(b) Mr. J. Starnes

Summary of evidence

16. Mr. Starnes told us that when he joined the Security Service it was clear to him that his talents did not lie in the field of operations. "I wouldn't know one end of a microphone from another" (Vol. 90, p. 14709). He did not involve himself in operational matters as such, since he felt he was totally incapable of doing so (Vol. 90, p. 14710).

17. Mr. Starnes testified that when he took office in 1970 he was made aware of the fact that the exteriors of envelopes in the mail were examined and copied, but he was not informed of the opening of mail (Vol. 90, pp. 14702-3, 14706-7, 14719; Vol. 104, p. 16374). He did not consider that cover checks and reproduction of covers were illegal, although it was made plain to him that some Post Office officials who were helping might be in difficulty with their superiors (Vol. 90, p. 14719). To the best of his recollection, Mr. Starnes never asked his immediate subordinates, Messrs. Parent, Draper or Barrette, whether the Security Service was opening or intercepting first class mail because the subject "wouldn't have been a great matter in [his] life" (Vol. 104, p. 16376). In fact, Mr. Starnes told us that he never asked anyone in the Security Service if they were opening mail (Vol. 90, pp. 14706-7). He said that he had, he thought, been made aware of what the R.C.M.P. Security Service was doing in its relations with postal officials, and as far as he was concerned that was where the matter ended (Vol. 104, p. 16376).

18. Mr. Starnes was shown a memorandum dated November 2, 1970 (Ex. B-16), setting out the centralization of Security Service mail check operations under code names Cathedral A, B and C (Vol. 90, p. 14710). That memorandum was issued during the six-week period when he was ill with pneumonia.

He told us that, had he been at work, he would have expected anything which his officials felt he should know about would have been brought to his attention. Mr. Starnes said he never saw the document centralizing mail check operations, and assumes this was an oversight on the part of his officials. He is reasonably satisfied that his officials were not trying to conceal something from him, although he states that there was no question in his mind that he should have known about it (Vol. 90, p. 14709; Vol. 105, p. 16503). With hindsight, Mr. Starnes views mail opening as a matter that really "just slipped below the floorboards" — a purely accidental oversight (Vol. 105, p. 16503). He said that had he been aware of the actual use of Cathedral operations, he would have been very upset and worried about the safety of his own people who were doing "this kind of thing" (mail opening) and he would have taken the matter to Ministers (Vol. 90, pp. 14711-12). Mr. Starnes told us that he was surprised when he heard (after this Commission of Inquiry had begun) that mail opening had been taking place for a very long time (Vol. 90, pp. 14706-7).

19. Mr. Starnes testified that he had not seen the results of any mail opening (Vol. 91, p. 14951). Mr. Higgitt, however, told us that he would be surprised if Mr. Starnes had not known of Cathedral C operations (Vol. 88, pp. 14482-3, 14485). Mr. Higgitt stated that it would be a reasonable deduction that Mr. Starnes had seen reports from members of the Security Service which, if he had read them, would have given him some level of knowledge of the whole Cathedral matter (Vol. 88, p. 14483). Although he did not have any special recollection of discussing Cathedral C operations with Mr. Starnes, he said it was conceivable that he did (Vol. 88, p. 14505). Later, Mr. Higgitt stated that he did not believe that he personally had briefed Mr. Starnes in respect of Cathedral, nor did he recollect directly mentioning to Mr. Starnes mail opening operations as a Security Service tool. He said that he felt that Mr. Starnes had senior officers reporting immediately to him and had spent considerable time being briefed by those officers. Mr. Higgitt did not have time to take part, personally, in those sorts of briefings (Vol. 112, p. 17260).

20. Mr. Starnes said that Messrs. Parent, Draper and Barrette, or one or more of them, had described mail operations to him during his briefings, but that they did not discuss the need for intercepting and opening first class mail as discussed by the Royal Commission on Security. It was quite clear, however, that the Security Service was urging the government to address itself to a number of the recommendations of that Commission, including that one relating to mail (Vol. 104, pp. 16374-76). Mr. Starnes could recall no discussion with any Minister specifically on the subject of mail interception and amendments to permit it (Vol. 104, pp. 16377-8), although he recalled that the Security Service repeatedly urged Ministers to deal with the recommendations of the Royal Commission on Security, which included a recommendation that the Security Service be permitted to open first class mail (Vol. 91, p. 14881).

Conclusion

21. We believe that Mr. Starnes knew of the techniques of examining the exterior of envelopes and photographing them and that he did not consider

these to be wrong. We further believe that Mr. Starnes did not know that mail was being opened or that an operational policy envisaged the opening of mail. Yet we cannot ignore one piece of evidence, a memorandum dated May 20, 1971 (Ex. MC-7, Tab 16) directed to Mr. Starnes, that indicates that Mr. Starnes was indeed aware of some improprieties in the R.C.M.P.-Post Office relationship. That memorandum states, in part:

Most departmental records are of course subject to the provisions of various acts i.e. Income Tax Act or other Regulations, i.e. Post Office Regulations and the consequent interpretation or application of these acts and regulations have largely been to our disadvantage. In those few areas where regulations have been disregarded to a large degree, (the Post Office Department is a good case in point) we recognize the unhappy fact that those who cooperate with us are placing themselves in jeopardy, directly in proportion to the measure of their cooperation. This is a problem which has become increasingly frustrating in recent years.

Whatever the nature of the Post Office Regulations being disregarded (the memorandum did not elaborate), it is clear that Mr. Starnes was made aware of improprieties in the R.C.M.P.-Post Office relationship. It appears, however, that he chose not to inquire further into the nature of these improprieties, nor did he attempt to put a stop to them, as he ought to have done. His conduct in that regard was unacceptable.

(c) Commissioner M.J. Nadon

Summary of evidence

22. Commissioner Nadon, whose background was entirely in criminal investigations, told us that even before becoming Deputy Commissioner he assumed that mail was being opened in criminal investigations (Vol. 129, p. 20108). He knew that mail opening had occurred in drug cases, although he was not aware of specific cases, and he knew there was a liaison with Post Office authorities in connection with drug investigations (Vol. 129, pp. 20095, 20097-8, 20105-6). Mr. Nadon stated that before he became Commissioner he had heard that some members of the drug squad had arranged with postal authorities to open certain types of mail, when it was certain that it contained drugs and that the cases would be brought before the courts, but he told us that he took it for granted that the postal authorities had authority to open such parcels or mail (Vol. 129, pp. 20097, 20104-6). (He would have been right if he were thinking of customs officials if they were sure, or even had reasonable grounds to believe, that an article of mail contained drugs.) Mr. Nadon felt that this was the general understanding of members of the Force in the C.I.B. field (Vol. 129, p. 20106).

23. Mr. Nadon's stated belief in the legality of mail openings in drug investigations appears to have changed by the time of a 1975 letter he prepared at the request of Mr. Allmand in response to a question about narcotic smuggling raised by the Right Honourable John Diefenbaker (Ex. M-62). Mr. Nadon replied directly to Mr. Diefenbaker, and forwarded a copy of his reply to Mr. Allmand. Mr. Nadon stated in that reply:

Under the present regulations, first class mail cannot be opened except in the presence of the addressee or with the written permission of the addressee. At the present time, even if it is reasonably suspected that a first class letter or package contains illicit drugs, the letter or package cannot be tampered with or the contents substituted but must be followed in fact to its final destination.

(Ex. M-62.)

(Mr. Nadon was not asked about this letter when he testified. Nonetheless, it seems reasonable to infer that he was indeed aware, at least by 1975, that mail opening in drug investigations was illegal.)

24. Mr. Nadon was also aware that a liaison existed between the Security Service and the Post Office, but he did not know the exact details of the liaison (Vol. 129, p. 20095). He stated that he was informed that the Security Service was examining mail, but that he did not *know* they were actually opening it, and never asked if in fact they were doing so (Vol. 129, pp. 20098-9, 20102). He said that it did not occur to him to ask if they were (Vol. 129, p. 20120). "I would never go into the detail of the liaison with the Post Office or with the U.I.C. or with the Income Tax or any of the Departments... unless they requested my assistance". He regarded it as a matter of operational policy and apparently not of concern to him (Vol. 129, p. 20098). When asked whether he had examined the practice of the Security Service, he told us that he had had "too many other occupations to allow [him] to go into an audit of various departments" (Vol. 129, p. 20101). He told us that it did not occur to him that the Security Service would have the same type of liaison with the Post Office that existed in the drug field, because the Security Service faced different problems (Vol. 129, p. 20100).

25. Mr. Nadon stated that before 1976 he had probably heard the word Cathedral but it did not register with him as referring to a liaison with the Post Office. He said he is satisfied that the word Cathedral would certainly have been brought to his attention when a report was submitted to the Minister, possibly in 1976, requesting amendments to the postal laws (Vol. 129, p. 20103). However, he said that only recently, (that is, after the commencement of this Commission of Inquiry) was he made aware of the Cathedral A, B and C categories of examining mail (Vol. 129, p. 20096).

26. Mr. Nadon stated that he did not see the letter (Ex. M-59) that was drafted for Mr. Allmand's signature in reply to Mr. Lawrence's query about the correspondence of one of Mr. Lawrence's constituents, Mr. Keeler, and that the matter did not come to his attention (Vol. 129, p. 20139). At the time — December 1973 — he was Deputy Commissioner for Criminal Operations. However, by January 1974, he had become Commissioner. When Counsel for the Commission showed him a letter (Ex. M-102) that he had signed and sent to Mr. Lawrence on January 14, 1974, he still did not recall the matter having been brought to his attention. He believes that he did not regard the matter as "that important" because Mr. Keeler's complaint to Mr. Lawrence arose not from the R.C.M.P. having gone to the Post Office but from another department having referred the card to the R.C.M.P. for investigation (Vol. 129, pp. 20143-5). As for the letter that was drafted for Mr. Allmand's signature,

which he did not see (Vol. 129, p. 20149), (containing the assurance that it was not the "practice" of the R.C.M.P. "to intercept the private mail of anyone") Mr. Nadon said that he would not have written that assurance, as far as the C.I.B. was concerned, because it could mislead the Minister (Vol. 129, p. 20138). His statement is somewhat ironic in the light of the letter that he later sent to Mr. Diefenbaker.

Conclusion

27. We believe that while Commissioner Nadon did not know of specific instances when mail had been opened in the course of post, he became aware of the practice in criminal investigations and, at least by 1975, he knew that it could not be done under the law. Yet he did not forbid the use of the technique and misled both Mr. Diefenbaker and Mr. Allmand by sending the 1975 letter that could only be interpreted as meaning that first class mail was not opened in the course of post. His conduct in this regard was unacceptable.

(d) Mr. M.R. Dare

Summary of evidence

28. Mr. Dare told us that he first became aware of the technique of Cathedral A, B and C in late 1973 or early 1974 during briefings with the Deputy Director General (Operations), Mr. Howard Draper. At that time, Mr. Draper did not indicate whether the Security Service was conducting A, B and C operations, nor did Mr. Dare ask if such operations were being conducted (Vol. 125, pp. 19470-1, 19474-5). Mr. Dare told us that he was not then aware that Cathedral C was in fact being used (Vol. C93, pp. 12661-2; Vol. 127, p. 19869; Vol. 128, pp. 19902-3). He agreed that it seemed anomalous that there was a Cathedral C category if nothing was being done under it (Vol. 127, p. 19868).

29. Mr. Dare stated that after his briefing in late 1973 or early 1974, he learned of a June 22, 1973, communication suspending all Cathedral operations (Vol. 125, p. 19471). Mr. Dare therefore felt that no Cathedral operations were being conducted (Vol. 125, p. 19475). It did not cross his mind that an investigation of this matter was an area of his responsibility (Vol. 127, p. 19868). Mr. Dare told us that he first became aware of the *practice* of Cathedral C (as opposed to being aware of the nature of the technique) in November 1977 (Vol. C93, pp. 12661-2). In June 1977, when Mr. Fox was preparing his statement for the House of Commons, Mr. Dare told us that he, Dare, was aware only of the practice of Cathedral A and B (Vol. C93, p. 12664).

30. We questioned Mr. Dare about a document entitled "A Damage Report Concerning One Constable Samson" (Ex. M-88, Tab 4; Vol. 125, pp. 19486-7). The report in part indicated that "Samson would be aware of our Cathedral capability (mail intercepts)" (Vol. 125, p. 19490). Mr. Dare read that document in August 1974 and discussed it with Mr. Draper, but told us that he did not ask him if, in fact, mail interceptions were occurring at that time, because a policy had been set out that operations were to be conducted

within the law, and both Cathedral A and B were to him within the law. Mr. Dare told us that at the time he had assumed that the reference to Cathedral in the Damage Report meant Cathedral A and B instead of Cathedral C (Vol. 125, pp. 19490-2). Elsewhere in his testimony Mr. Dare told us that when he used the word "intercept" in relation to mail in December 1973, he meant "open" (Vol. 125, p. 19480).

31. Mr. Dare was asked about a letter (Ex. M-88, Tab 7), dated July 9, 1975, from Mr. Ralph Nader to Prime Minister Trudeau (Vol. 125, p. 19504). Mr. Nader's letter raised the general question of interception of mail and asked whether mail intercepts took place in Canada (Vol. 125, p. 19504). A draft reply was prepared for Mr. Trudeau's signature stating:

Cooperation has been extended to Canadian police authorities from time to time when individual circumstances strongly indicated that it was in the best interests of the public to do so but under no circumstances would the Canada Post Office permit mail to be illegally opened or delayed.

(Ex. M-88, Tab 10.)

Mr. Dare told us he was not aware at that time that the Post Office co-operated with the R.C.M.P. to permit the opening of first class mail (Vol. 125, p. 19506). He told us that he did not inquire if mail openings were being carried out, other than to ask the appropriate staff branch to prepare a reply (Vol. 125, p. 19511).

32. Mr. Dare told us that in June 1977 he had read the Department of Justice memorandum (Ex. M-107) outlining two methods which Messrs. Brunet and McCleery stated were used by the Security Service to obtain access to the mails (Vol. C88, p. 12124). Mr. Dare testified that he considered their statements to be allegations that mail was being opened, not statements of fact (Vol. C88, pp. 12125-27). Mr. Dare discussed the memorandum with Deputy Director General (Operations) Sexsmith. Yet he did not inquire precisely whether the allegations concerning mail opening described in the memorandum were true (Vol. C88, pp. 12128, 12143). Rather, he said that he raised "the whole package" of allegations by Messrs. Brunet and McCleery (Vol. C88, p. 12129).

33. Mr. Fox testified that in January or February 1977 Mr. Dare had indicated to him that the R.C.M.P. was not opening mail (Vol. 161, p. 24790). Mr. Fox recalled Mr. Dare telling him after the November 1977 meeting, called to discuss the CBC allegations of mail opening, that he had not been aware of the practice of mail opening before that meeting (Vol. 161, p. 24787). On November 29, 1977, Mr. Dare told the House of Commons Standing Committee on Justice and Legal Affairs that he had not been aware of mail opening prior to being advised of it by Mr. Sexsmith following the revelations by the CBC on November 8, 1977. After so advising the Committee, Mr. Dare was reminded by Mr. Sexsmith that in July 1976, Mr. Sexsmith had told him about a mail opening operation in the Ottawa area which had been discontinued. Mr. Dare said that, although he did not remember the July 1976 conversation with Mr. Sexsmith, he believed that it took place and accordingly he wrote to the Chairman of the Standing Committee on December 5, 1977, to correct his testimony.

34. Mr. Dare testified that he felt Cathedral A and B to be legal (Vol. 125, pp. 19475, 19490-1, 19518; Vol. C93, pp. 12664-5). He specifically stated that "at no time... would I condone, or have I approved Cathedral C, which is quite illegal" (Vol. 125, p. 19475).

Conclusion

35. We accept Mr. Dare's evidence that until July 1976 he did not know that the Security Service opened mail. It is true that before that he had been told that there was a policy — Cathedral C — that provided for the opening of mail, and after being so informed he was told of the suspension of that policy. In addition, he had received the Samson Damage Report. However, he was not explicitly told that the mail had, until 1973, been opened. When he led Mr. Allmand to believe that mail opening was not a technique in use or that had been used, he did not do so with intent to deceive Mr. Allmand. However, the better course would have been to tell Mr. Allmand that there had been a policy in existence that contemplated the opening of mail.

(e) Commissioner R.H. Simmonds

Summary of evidence

36. Commissioner Simmonds' R.C.M.P. background, before he became Commissioner, was entirely in criminal investigation and administration.

37. He was aware of the longstanding co-operation between the Post Office and the R.C.M.P. on "matters of proper interest". He testified that there could be a great deal of access to mails by members of the Force as customs officers and as policemen (Vol. 168, pp. 25803, 25807, 25811-2).

38. However, he stated that during the approximately 30 years that he had been a member of the Force, prior to 1977 he was not aware of a practice of opening letters without the recipient's permission, other than in conditions where opening was permitted under the Post Office Act (Vol. 168, pp. 25807-8). Mr. Simmonds felt, however, that the Post Office Act was very imprecise, and the definition of what the law allows under the Act was not very clear (Vol. 168, p. 25807, Vol. 165, p. 25425). When asked if, on the criminal investigation side, he knew of a practice or of any instance in which letters were opened to be read, Mr. Simmonds replied that he was not aware of any such incidents and to this day doubts if any occurred (Vol. 168, p. 25812). Mr. Simmonds stated that he probably first became aware of the Security Service programme named Cathedral in November 1977 (Vol. 168, pp. 25803-4).

Conclusion

39. We accept that, neither before he became Commissioner (on September 1, 1977) nor during the ten weeks between that date and the public revelation, did Commissioner Simmonds know that in the past there had been a policy in the Security Service that permitted the opening of mail in the course of post. On the criminal investigation side, we are satisfied that he did not know of any cases when letters were read or when envelopes were opened, except as permitted under legislation.

(f) The Honourable George McIlraith

Summary of evidence

40. Senator McIlraith told us that:

In any event, mail, I never thought they were opening it, because I did not think anybody in the espionage business would be stupid enough to put things in the mail and have it delivered anywhere, or lost, or picked up by anybody other than the ones for whom it was intended.

Even more positively, he said that his "understanding was that the police were not opening mail, period" (Vol. 118, p. 18336). He said that he never had a request from the R.C.M.P. or anyone else to do anything about the law relating to the issue, it was never discussed, and he did not read the provisions of the Post Office Act until shortly before testifying (Vol. 118, pp. 18340). He has no recollection of having been inspired by what the Royal Commission on Security said as to the need to be able to open mail to ask the R.C.M.P. whether they felt there was any such need (Vol. 118, p. 18341).

41. Mr. Higgitt told us that he discussed with Mr. McIlraith the question of Cathedral, pointing out its importance from his, Higgitt's, point of view (Vol. 84, pp. 13781-2; Vol. 113, pp. 17355-6), but could not recall specific occasions on which he did so, nor could he recall actually using the term Cathedral in those discussions (Vol. 113, pp. 17358-9).

Conclusion

42. We have no reason to disbelieve Senator McIlraith; even former Commissioner Higgitt did not testify that he could recall having used the term "Cathedral" in discussions with him. We believe that Commissioner Higgitt, at most, discussed with Mr. McIlraith the desirability of having the legislation amended, and that, in doing so, he did not disclose the fact that Force policy permitted the opening of mail.

(g) The Honourable Jean-Pierre Goyer

Summary of evidence

43. Mr. Goyer testified that he had no recollection of the opening of mail for the purposes of the Security Service or for those of criminal investigation having been discussed with him whether in terms of such a technique being presently used or in terms of the need for enabling legislation (Vol. 123, pp. 19192-5). He told us that he did not know that the R.C.M.P. opened mail (Vol. 123, p. 19197). He said that he never questioned members of the R.C.M.P. on the subject, and never saw the need to do so, for he always presumed that members of the R.C.M.P. respected the law (Vol. 123, p. 19198). Nor, he told us, did he ever hear the code name Cathedral during his term as Solicitor General (Vol. 123, p. 19310).

44. However, Commissioner Higgitt testified that he discussed the question of Cathedral with Mr. Goyer and pointed out its importance from his, Higgitt's, point of view (Vol. 84, pp. 13781-2; Vol. 113, p. 17355). He could not remember specific times and dates of such discussions (Vol. 88, pp.

14491-3, 14503) but mentioned situations that would lead him to discuss questions related to the mail with Mr. Goyer; namely, when Members of Parliament occasionally raised questions about mail tamperings, and when issues were raised in the press (Vol. 88, p. 14503).

45. Mr. Higgitt did not think he would have distinguished amongst Cathedral A, B and C in his discussions with Mr. Goyer (Vol. 88, p. 14490), and he could not state with precision whether he had indicated to Mr. Goyer that the R.C.M.P. was intercepting and opening mail (Vol. 88, p. 14494). Nor could he recall Mr. Goyer ever asking him if the R.C.M.P. was involved in the interception of anyone's mail (Vol. 88, p. 14494).

46. Mr. Starnes testified that he could recall no discussion with Mr. Goyer on the subject of mail interception and amendments to permit it (Vol. C31, pp. 3807-8). Moreover, as already stated, Mr. Starnes denies that he knew that mail was being opened, and we believe him. Consequently, he could not have told Mr. Goyer about it.

Conclusion

47. We conclude that Mr. Goyer was not informed of the practice of opening mail or of any specific cases in which that was done. While Commissioner Higgitt may have discussed with him the importance of having this technique available, we think that the current use of the practice itself was likely not disclosed to him.

(h) The Honourable Warren Allmand

Summary of evidence

48. Mr. Allmand did not recall hearing the code name Cathedral during his term as Solicitor General (Vol. 117, p. 18071). He first heard the expression used before this Commission (Vol. 114, p. 17574). Mr. Allmand told us, however, that his memory was "very, very clear" that "during many of their discussions I asked the R.C.M.P. whether they had opened mail or whether they were opening the mail and I was repeatedly told that they were not" (Vol. 114, pp. 17552-4; Vol. 115, p. 17866; Vol. 117, p. 18071). Mr. Allmand could not remember which R.C.M.P. officials told him that they were not opening mail (Vol. 117, p. 18070). He testified that they told him:

If we are pursuing a case and it is a matter that a piece of mail may be evidence or intelligence or whatever, we may go and follow it to its destination and we may take pictures of the envelope, note the return address, if any, the handwriting, et cetera, et cetera, the stamp, the postal... You know, they said they would observe the envelope and get whatever information they could, but they categorically, to me, denied they opened mail. And the question was put on several occasions during my mandate. As a matter of fact, they would come to me saying, 'We must have — because we can't open the mail, we want your support in an amendment to the law which will allow us to open the mail.'

(Vol. 114, pp. 17553-4.)

49. Mr. Bourne's testimony confirms that of Mr. Allmand in regard to one occasion when the subject of mail opening was discussed. He testified that the

R.C.M.P. did not tell him that they opened mail, but he was present on one occasion when senior officials of the R.C.M.P. discussed mail cover operations, in which, they said, addresses and return addresses would be noted (Vol. 140, p. 21528). He confirmed that the topic came up in 1974 at a regular meeting between the Solicitor General and the Commissioner and his deputies. He told us that he had a clear memory of the discussion, which arose in connection with Mr. Lawrence's letter, and that the Minister, in answer to his question, was assured that letters were not being opened. He does not remember who it was that gave the assurance (Vol. 140, pp. 21534-6). Mr. Bourne testified that he did not know of mail opening until it was discussed publicly in November 1977 (Vol. 140, p. 21553).

50. Mr. Tassé's testimony also confirms that of Mr. Allmand. He told us that he did know that the R.C.M.P. examined and photographed the exterior of envelopes in the mail but he did not know that they opened mail or that it had been opened (Vol. 156, pp. 23766-7). He recalls that at the time of Mr. Lawrence's query, the managing officials of the R.C.M.P. said that there had not been opening of the mail, in answer to an inquiry by Mr. Allmand. He understood that their policy was that there was no mail opening (Vol. 156, pp. 23766-7, 23772, 23776-7).

51. In April 1976, Mr. Dare applied under the Official Secrets Act for a warrant to open mail in the case of a suspected Japanese Red Army terrorist. Mr. Allmand wrote to the Minister of Justice to say that the execution of such warrants "is predicated on a supporting opinion from your Ministry that the Official Secrets Act takes precedence over section 43 of the Post Office Act" (Vol. 115, p. 17857). The reply indicated that the Post Office Act overrode the provisions of the Official Secrets Act (Vol. 114, p. 17571). The warrant was therefore not executed. Mr. Dare testified that at that time there was no discussion with Mr. Allmand as to whether the Security Service had opened first class mail. Nor did Mr. Allmand inquire whether the Security Service had done so (Vol. 125, p. 19534).

52. Mr. Allmand testified that he had several discussions with the R.C.M.P. about the opening of mail for drug investigations and security purposes (Vol. 114, p. 17569). Mr. Allmand was convinced by R.C.M.P. arguments that in order to do their job properly they required amendments to the Post Office Act (Vol. 114, p. 17555). In 1974 and 1975 the R.C.M.P. approached Mr. Allmand to seek his support in having the Post Office Act amended to allow the opening of mail (Vol. 115, p. 17852; Ex. M-54). As a result he wrote to the Postmaster General in 1975 and 1976, requesting an amendment to assist in the investigation of drug offences. Later he wrote another letter dealing with security matters (Vol. 114, p. 17550-9). In July 1976, at the request of the R.C.M.P., he wrote to the Postmaster General for an amendment to the Act in respect of the Security Service (Vol. 115, p. 17860). He was also aware of a question asked in the House of Commons by the Right Honourable John Diefenbaker concerning amendments to the Post Office Act to deal with drugs, to which he replied that such amendments were being considered; and he saw a reply to Mr. Diefenbaker written by Commissioner Nadon (Vol. 115, p.

17865). He says that, when he was asked for his support of amendments, he asked the R.C.M.P. whether they were, in fact, opening the mail, and again, he asked at the time of Mr. Lawrence's letter about Mr. Keeler (Vol. 114, pp. 17552-3).

53. On the other hand, Commissioner Nadon testified that he does not recall Mr. Allmand ever asking for information on mail opening in his presence nor does he recall any discussion about mail opening in the presence of Mr. Allmand (Vol. 129, pp. 20094, 20111, 20113, 20154-5). He said that he recalled that on one occasion, relating to drugs, and on another occasion, relating to the Security Service, he had written a letter to the Minister requesting amendments to legislation, but that there was no discussion on the matter with the Minister. Commissioner Nadon testified that the correspondence simply came to him, he signed it, and passed it on to the Minister (Vol. 129, p. 20111).

54. Commissioner Higgitt testified that he had discussed the question of Cathedral with Mr. Allmand. He could not recall specific occasions when these discussions took place (Vol. 84, pp. 13780-1). Mr. Higgitt did not elaborate as to just what he "discussed" with Mr. Allmand. However, it is clear from his testimony that he went no further than to discuss the need of mail opening as an investigative technique. He does not say that he told Mr. Allmand that mail had been opened. The most Mr. Higgitt could say was that Ministers were seeing the results in various forms. Our own experience with R.C.M.P. reporting phraseology satisfies us that "seeing the results" would not necessarily enable a Minister to discover that mail had been opened.

55. Mr. Dare said that he felt that Mr. Allmand had every right to assume that the R.C.M.P. had confirmed that they were not opening mail (Vol. 125, p. 19535). "Mr. Allmand at no time had any other perception or should not have had any other perception than the fact that we were not opening mail" (Vol. 125, p. 19536). Some time in 1976 Mr. Allmand had, in his presence, asked if first class mail was being opened. Mr. Dare believes that Mr. Allmand put this question to Mr. Nadon and that Mr. Nadon replied that neither the C.I.B. nor the Security Service had opened first class mail (Vol. 125, pp. 19535-7).

56. Mr. K.J. MacDonald, Executive Assistant to Mr. Allmand from September 1975, to September 1976, attended the weekly meetings between Mr. Allmand and senior officers of the R.C.M.P. He recalls mail opening having been discussed on four or five occasions between March and September 1976 (Vol. 157, p. 23960). He has a note that, after Mr. Allmand appeared on a panel with Mr. Ralph Nader at the end of August 1976, at a convention of the Canadian Bar Association, Mr. Allmand telephoned to say that Mr. Nader had raised the question of mail opening again, as he had in an earlier letter to the Prime Minister. Mr. Allmand asked Mr. MacDonald once again to check with the R.C.M.P. "to see if this could be straightened out at last". Mr. MacDonald recalls having telephoned Mr. Dare, and his note of the conversation indicates that he was told that all requests were on the criminal side, not the Security Service side (Vol. 157, p. 23976). We note, to avoid any confusion, that this reference by Mr. MacDonald to "requests on the criminal side" was made in

the context of mail cover operations, which involved only following and tracing (Vol. 157, pp. 23963-7). Mr. MacDonald was not aware of mail opening in practice.

Conclusion

57. We accept Mr. Allmand's evidence, confirmed as it is by that of Mr. Tassé, Mr. Bourne, Mr. Dare and Mr. K.J. MacDonald. These four witnesses all confirm occasions on which Mr. Allmand asked members of the R.C.M.P. whether mail was being opened and received answers in the negative, both as to the C.I.B. and the Security Service. It is true that Commissioner Nadon said that he could not recall any discussion of mail opening in the presence of Mr. Allmand, but Mr. Dare remembers one such occasion and we think that Commissioner Nadon's memory must have failed him. It is also true that Commissioner Higgitt told us that he had discussed Cathedral with Mr. Allmand, but he could not recall any specific occasions. Again we feel that the current use of the technique was likely not made known to Mr. Allmand.

(i) The Honourable Francis Fox

Summary of evidence

58. On February 11, 1977, Mr. Fox signed, pursuant to section 16 of the Official Secrets Act, the first Annual Report on the interception of communications for submission to the House of Commons. The report indicated that Mr. Allmand had signed a warrant authorizing the interception of mail, but that the warrant had not been executed. Mr. Fox recalled asking for an explanation about this warrant before he signed the report. Mr. Fox directed questions concerning the opening of mail to Mr. Dare, and Mr. Dare communicated the response to him. Mr. Fox told us that he believed, although he was not certain, that Mr. Nadon was present at the time (Vol. 161, pp. 24779-80). This was the first time that he had discussed the opening of mail with the R.C.M.P. It was explained to him that the Department of Justice had offered an opinion that section 43 of the Post Office Act took precedence over section 16 of the Official Secrets Act and that the Solicitor General did not have the authority to issue such a warrant. Mr. Fox recalls at that time that he was told that the R.C.M.P. was not opening the mail, and did not have the right to do so, although the R.C.M.P. indicated to him that they would have liked to have the power legally to open mail (Vol. 161, pp. 24775-9).

59. Mr. Fox told us that he had been offended by an editorial that appeared in the Toronto *Globe and Mail* around the end of August or the beginning of September 1977, stating that the Security Service was opening mail. Mr. Fox testified that he replied to the newspaper in a letter indicating that he found the editorial rather irresponsible, that the R.C.M.P. was not opening mail, and that no section of the Official Secrets Act gave them the right to open mail. He testified that he asked his Department to verify the contents of his letter with the R.C.M.P. before he sent it to the *Globe and Mail* (Vol. 161, p. 24783). Since Mr. Fox testified we have examined the editorial he referred to, which appeared in the *Globe and Mail* on August 30, 1977. The editorial concerned

the law relating to wiretapping, but in passing stated that under section 16 of the Official Secrets Act the Solicitor General was required to submit an annual report to Parliament as to several matters including "a general description of the methods of interception used (wiretapping, mail-opening and so on)...". It stated also that "The Solicitor General is not required to inform Parliament, or anyone else, of exactly whose phones have been tapped or whose mail has been opened". We have also obtained a copy of the letter Mr. Fox wrote to the *Globe and Mail* on September 13, 1977. So far as we can tell, the letter was not published. On the subject of the mail, it stated:

Your reference to authorized opening of mail is also factually incorrect. . . Rather than your portrayal of indiscriminate interception of the mails, the facts are that no interceptions take place at all.

60. Mr. Fox also testified about the CBC television programme broadcast on November 8, 1977, which alleged that the R.C.M.P. had opened the mail of someone suspected to be a member of the terrorist group, the Japanese Red Army. The morning after, he requested an urgent meeting with the R.C.M.P. because he was certain that there would be questions about these revelations in the Commons that afternoon. Mr. Fox believes that Mr. Dare, Assistant Commissioner Sexsmith, Commissioner Simmonds and some officials from the Post Office came to his office (Vol. 161, pp. 24783-4). At that time, Assistant Commissioner Sexsmith told him that the R.C.M.P. had been opening mail for a long time but that the practice had been terminated by him some time, as Mr. Fox recalled, in 1975 or 1976 (Vol. 161, pp. 24782, 24784). Assistant Commissioner Sexsmith did not explain to him why he had terminated the practice (Vol. 161, pp. 24788-9). That was the first precise confirmation given to Mr. Fox that the Security Service had been opening mail (Vol. 161, p. 24784). Mr. Sexsmith testified that before the revelation by the CBC on November 8, 1977, the R.C.M.P. had told Mr. Fox that it did not use the mail opening technique at all (Vol. 161, p. 24786).

61. Mr. Dare told us that after the allegation by Messrs. Brunet and McCleery, reported in Mr. Landry's memorandum dated June 24, 1977, he could not recall Mr. Fox specifically asking if mail was being opened or had been opened, but he noted that Mr. Fox did seek assurances from him and Mr. Nadon that the R.C.M.P. was acting within the law (Vol. 128, pp. 19907-8).

62. Commissioner Simmonds also recalled that Mr. Fox, in November 1977, had asked whether in fact mail was being opened. Commissioner Simmonds told us that this was the first time he could recollect any Minister having raised that question (Vol. 168, pp. 25809-10).

Conclusion

63. There is no reason to question Mr. Fox's evidence. Indeed, the one occasion when the issue arose before late June 1977, was when, earlier that year, he asked about the incident referred to in the Annual Report he was being asked to sign, and he was told that the R.C.M.P. did not open mail.

(j) Mr. Donald Beavis

Summary of evidence

64. On June 5, 1978, Mr. Donald Beavis, a former employee in the Privy Council Office, was reported in the *Globe and Mail* as having said that it was a "fact of life" among certain government people that the R.C.M.P. was illegally opening mail. The article was based on an interview by telephone. The interview occurred after the "uproar about mail opening" had started and was "appearing in the paper", which he says he had "deliberately" not been following (Vol. 313, p. 301148). Mr. Beavis told us that what he said to the interviewer was that "it would have astounded" him if the R.C.M.P. were not opening mail. He says that this was a

deduction from whatever else we did, from my background in the Communications Branch and my background as a security officer.

(Vol. 313, p. 301152.)

By this he means that he knew that in the Communications Branch written communications were not sent by mail but by hand, in order to protect them against interception by an enemy. He inferred that

If we did that, to look after our material, then surely, the opposite side of the coin would be that our own Security Service must be either considering or doing mail opening.

(Vol. 313, p. 301155.)

He admits that it was an "inference" on his part (Vol. 313, p. 301158), and "conjecture" (Vol. 313, p. 301171). He also told us that when he had worked for the Communications Branch of the National Research Council all documents of a nature that required cryptanalysis passed through his hands and that at no time did the R.C.M.P. send a document for such an analysis that appeared to him to have come into the hands of the R.C.M.P. as a result of their having opened mail. He and the analysts, he believes, would have been able to infer that the material submitted for analysis had come from the opening of mail if that had been so (Vol. C84, pp. 11477-9).

Conclusion

65. We asked Mr. Beavis to testify because the newspaper article, if left outstanding as it was, would have suggested that an official of the Privy Council Office had known that the R.C.M.P. were opening mail. We are satisfied that Mr. Beavis (who died in 1980, after he testified *in camera* but before his testimony was made public) did not know of the practice but had inferred that it existed as a result of work he had done in another department of the government. There is no suggestion that Mr. Beavis passed on the results of his conjecture to any other official.

(k) Mr. D.S. Maxwell

Summary of evidence

66. Mr. D.S. Maxwell was Deputy Minister of Justice and Deputy Attorney General from March 1968 to February 1973. He was appointed Associate

Deputy Minister of Justice in 1960 and between that date and 1966, when the R.C.M.P. ceased to report to the Minister of Justice, he has no memory of any opinion having been sought from him with regard to the opening of mail. He does not think that he was aware of the fact that the R.C.M.P. were engaged in the opening of mail during the period from 1960 to 1966 (Vol. C65, pp. 9101-2). He feels quite certain that while he was Deputy Minister of Justice and previously he was not aware that the R.C.M.P. had opened first class mail as a practice or on any specific occasion or occasions (Vol. C66, p. 9251).

Conclusion

67. We accept the evidence of Mr. Maxwell that he was unaware of the practice of mail opening.

C. GENERAL CONCLUSION

68. We are satisfied that Solicitors General and those public servants whose evidence we have discussed did not know that the mail had been opened by members of the R.C.M.P., or that any policy or practice existed or had existed that permitted or tolerated the opening of mail, whether for the purposes of criminal investigation or those of the Security Service.

CHAPTER 4

ACCESS TO AND USE OF CONFIDENTIAL INFORMATION HELD BY THE FEDERAL GOVERNMENT — CRIMINAL INVESTIGATIONS

1. In our Second Report, Part III, Chapter 5, we examined the manner in which the Criminal Investigation side of the R.C.M.P. has sought access to the records of five government departments to obtain information on individuals. These included the records of the Department of National Revenue, Canada Employment and Immigration Commission (formerly known as the Unemployment Insurance Commission), the Department of National Health and Welfare, the Department of Industry, Trade and Commerce, and finally the Foreign Investment Review Agency. In the case of the latter two the attempts to obtain information were unsuccessful.
2. In this Report we now attempt to determine the extent to which this practice was known and reviewed at the level of senior members of the R.C.M.P., senior government officials and Ministers.
3. In this chapter, we also discuss the implementation of Force policy from 1973 to 1978 with regard to the liaison which had arisen between the C.I.B. and the U.I.C., as this matter was not dealt with in the Second Report.

A. KNOWLEDGE OF SENIOR OFFICIALS IN THE R.C.M.P., SENIOR PUBLIC SERVANTS AND MINISTERS OF THE LIAI- SON BETWEEN THE C.I.B. AND THE DEPARTMENT OF NA- TIONAL REVENUE

- (a) Commissioner W.L. Higgitt

Summary of evidence

4. Commissioner Higgitt testified that during his term as Commissioner he knew that, prior to 1972, members of the Force were obtaining information from the Department of National Revenue (D.N.R.) for the purposes of investigating Criminal Code matters. However, he did not remember whether he knew that the Force was receiving such information for the purpose of investigating crime in general, rather than offences related only to tax matters. He said that, had he been aware that information received from the D.N.R. by the Force was being released to other police forces, he would have taken steps to have the other police forces designated by the Minister pursuant to the Memorandum of Understanding (Vol. 85, pp. 14009-13, 14032, 14048). He

was not aware of any R.C.M.P. policy by which members of the Force could seek biographical data from the D.N.R., for any purpose, but he had a feeling that the Act made a distinction between financial information and other information (Vol. 85, pp. 14064-65).

Conclusion

5. On the evidence before us, we cannot say that Commissioner Higgitt realized at any time that the C.I.B. was obtaining information from D.N.R. sources for purposes that meant the Income Tax Act was being violated.

(b) Commissioner Maurice Nadon

Summary of evidence

6. Commissioner Nadon understood that information received from D.N.R. was to be held in the Commercial Crime Branch and not disseminated from that Branch. As of May 1976 he had not been informed of any breaches of section 241 by which information received under the agreement was being disseminated to other police forces. He told us that in 1976 he asked R.C.M.P. officials specifically if the Memorandum of Understanding was being respected and was told that there was a possibility of some breaches but no examples were given to him and that he therefore reinforced the instructions to the Force that information obtained from D.N.R. should not go to anyone outside of those specifically assigned under the Memorandum of Understanding. Later in his testimony, he said that he had always been informed that the Memorandum of Understanding and the Act were being respected. In 1977 he heard that a police department in the Ottawa area had summonsed an official of D.N.R. to appear as a witness and he was told at the time that it was suspected that some member of the R.C.M.P. had given some information to that police force. He never received information of any specific incident of a breach of section 241 but heard rumours to the effect that it was being violated by members of the C.I.B. (Vol. 128, pp. 20855, 20857, 20862, 20871, 20874).

7. According to his testimony, he believed that anything of a historic nature, if released, would not constitute a violation of section 241 of the Income Tax Act. He thought section 241 is limited to financial information (Vol. 136, pp. 20864-66).

Conclusion

8. There is no evidence before us that Commissioner Nadon knew that information was being obtained, used or disclosed for any purpose that would result in a breach of the provisions of the Income Tax Act.

(c) The Honourable George J. McIlraith

Summary of evidence

9. The only evidence as to Mr. McIlraith's knowledge of any aspect of access to information of this sort was his testimony that on one occasion the R.C.M.P. asked him if, in examining a case where they were called in by D.N.R. to do

investigative work and obtain evidence of other criminal activities outside the Income Tax Act, they could use that evidence to start an investigation into other organized crime activities. He told them they should go to the Department of Justice and get an opinion (Vol. 119, p. 18515).

Conclusion

10. There is no evidence before us that Mr. McIlraith knew of access to this type of information.

(d) The Honourable Jean-Pierre Goyer

Summary of evidence

11. Mr. Goyer testified that in regard to access to tax information under the Memorandum of Understanding, the question of whether the law was being obeyed was never discussed with him; it was taken for granted that it was being respected (Vol. 123, p. 19214).

Conclusion

12. There is no evidence before us that Mr. Goyer knew of any improper access to or use of tax information.

(e) The Honourable Warren Allmand

Summary of evidence

13. Mr. Allmand testified that the first time he was aware of any violation of the Act was when he received a letter, dated June 9, 1976, from the Honourable Bud Cullen expressing concerns about "a technical violation of the Act". He referred the matter to the R.C.M.P. for advice and its response. The matter gave him some concern but did not convey to him a high priority urgency because of the way it was worded. He did not know exactly what was meant by the reference in Mr. Cullen's letter. He found the words "technical violation" difficult to understand because there was no explanation or examples given (Vol. 115, pp. 17828, 17823, 17840). Commissioner Nadon testified that he told Mr. Allmand that he, Nadon, had been assured by those concerned that the Agreement was being respected (Vol. 136, p. 20871).

Conclusion

14. There is no evidence before us that Mr. Allmand knew of any improper access to or use of tax information prior to the June 9, 1976 letter from Mr. Cullen. When Mr. Allmand was told by Mr. Cullen that there were "technical violation", he took the necessary steps, prior to leaving the portfolio of Solicitor General, to ensure that the matter was investigated and dealt with.

(f) The Honourable Bud Cullen

Summary of evidence

15. The Honourable Bud Cullen was appointed Minister of National Revenue on September 26, 1975. He first became aware of possible violations of

section 241 of the Income Tax Act when it was raised with him by his officials on May 31, 1976. He thought that the way that things were being done under the Memorandum of Understanding was "at the very least" a technical violation of the Act. There was some apprehension on the part of his Department that information might be being given to R.C.M.P. members to be used other than for tax purposes or to be passed on to other people for other than tax purposes, and that D.N.R. officials were straining the definition of "for tax purposes". He could not get any definite statement from his officials as to whether information was being passed on improperly; they simply said that it could happen, human nature being what it is. There was one specific example of a Nepean policeman who had apparently received information through the R.C.M.P., and D.N.R. officers were subpoenaed to appear in court as a result. At the meeting with his officials on June 14, 1976, the officials could not assure him that D.N.R. was complying strictly with the secrecy provisions of the Income Tax Act and he told them that he wanted all such activities stopped and instructed them to phone the necessary officers in the Department immediately with those instructions. Those phone calls were made and were followed by a memorandum dated July 16, 1976 (Ex. M-64, Tab L, Vol. 117, pp. 18183, 18187, 18200-5, 18221). On the other hand, Mr. M.J. Bradshaw, who sent out the memorandum, testified that there was no suspicion that section 241 was not being complied with, that the phone calls and the letter were the result of a Parliamentary Committee which had been set up with respect to confidentiality of various Acts, that the Minister wanted an assurance that the Department was abiding by the confidentiality provisions of the Act, and that there was no suspicion that anyone was deviating from the Act (Vol. 62, p. 10066).

Conclusion

16. Mr. Cullen clearly had no knowledge of any conduct on the part of his officials that violated the Act. Indeed, when he even had a suspicion that that might be occurring, he inquired into the matter and issued firm instructions that there was to be no activity in violation of the Act.

(g) Mr. Roger Tassé

Summary of evidence

17. When Roger Tassé, the Deputy Solicitor General, saw the letter of June 9, 1976 from Mr. Cullen to the Honourable W. Allmand (M-64, Tab G) and the mention of "breaches" of "the present secrecy provisions of the Income Tax Act", he phoned the Deputy Minister of National Revenue, Mr. Hodgson, who told him that it was a question that was under study. Mr. Tassé said that Mr. Hodgson seemed to have all the information and to have the matter in hand. He told us that he expected that Mr. Hodgson would eventually bring it up again and discuss it with Mr. Allmand. Mr. Tassé did not think it was up to him to ensure that the Income Tax Act was enforced. That was the responsibility of the Minister of National Revenue and that is why he, Tassé, assured himself that the Deputy Minister of National Revenue was aware of the matter (Vol. 157, pp. 23856-9).

Conclusion

18. We accept Mr. Tassé's evidence that his knowledge was identical to that of his Minister and that he did what his Minister asked him to do.

(h) The Honourable Francis Fox

Summary of evidence

19. Mr. Allmand testified that he does not recall briefing Mr. Fox, his successor as Solicitor General, with respect to the "technical violation" raised by Mr. Cullen in his letter of June 9, 1976 (Ex. M-53, Tab D).

Conclusion

20. We have no evidence before us that Mr. Fox was aware of any violation of the Act, whether technical or otherwise.

B. KNOWLEDGE OF SENIOR OFFICIALS IN THE R.C.M.P., SENIOR PUBLIC SERVANTS AND MINISTERS OF THE LIAISON BETWEEN THE C.I.B. AND THE UNEMPLOYMENT INSURANCE COMMISSION

(a) Commissioner W.L. Higgitt

Summary of evidence

21. Commissioner Higgitt told us that he thinks that he was aware that the Unemployment Insurance Commission (U.I.C.) "was one of the places from which we sought information" but he could not go further than that, and said that he was not "directly involved in the use of that particular source" Vol. 85, p. 14026). He said that he does not recall having been made aware in 1971 that access to these sources was either cut off or severely restricted (p. 14027).

Conclusion

22. There is no evidence before us that Mr. Higgitt was aware of any illegalities involved in obtaining information from the Unemployment Insurance Commission.

(b) Commissioner Maurice Nadon

Summary of evidence

23. Commissioner Nadon testified: "I never would go into the detail of the liaison with the Post Office or with the U.I.C. or with the Income Tax or any of the Departments". He continued that this was "an operational policy that was in the Department concerned" and implied that, even when asked for his assistance by asking the Minister to get changes in legislation, he was not given details of existing or past access to departmental information (Vol. 129, pp. 20098-9).

Conclusion

24. There is no evidence before us that Mr. Nadon was aware of any access by the R.C.M.P. to Unemployment Insurance Commission data.

(c) Messrs. McIlraith, Goyer, Allmand and Fox

Summary of evidence

25. Turning to the Solicitors General, those who occupied that office in Commissioner Higgitt's time did not have any discussions with him, according to his recollection, concerning the difficulties of gaining access to U.I.C. data. Indeed, apart from his attempts to obtain access to Department of National Revenue information, he could not specifically recall seeking to expand the R.C.M.P.'s access to government information banks (Vol. 85, pp. 14027-31). Mr. Starnes told us that he could not recall any detailed discussions with Mr. Goyer concerning the problem of gaining access to Health and Welfare and U.I.C. records, which he had raised in a letter to Mr. Goyer on June 3, 1971 (MC-8, Tab 11), although he does remember talking to Mr. Bourne about access to those and other information banks. It was Mr. Bourne who drafted the letters that were subsequently sent over the signature of Mr. Goyer to Ministers requesting their co-operation. However, Mr. Starnes said that he could not recall the discussions (Vol. 149, pp. 22849-53). Mr. Starnes told us that he has no recollection of having discussed with the Solicitors General (Mr. Goyer and Mr. Allmand) the arrangements that were made with the U.I.C. in 1972 (Vol. C31, pp. 3879-81).

26. Mr. Allmand testified that he was not aware of any relationship between the R.C.M.P. and the U.I.C. (Vol. 115, p. 17850). Indeed, a memorandum dated June 1, 1973, from the Director of Personnel of the Security Service to the Deputy Director General recorded that during a visit to the R.C.M.P. in Montreal a member asked Mr. Allmand whether anything could be done to improve access to departmental records. The memorandum recorded that, according to the member:

The necessary information is not available from the Unemployment Insurance Commission, and, of course, Statistics Canada and Tax Information is unavailable.

(Vol. 114, pp. 17622-8.)

Conclusion

27. There is no evidence before us that Senator McIlraith, Mr. Goyer, Mr. Allmand or Mr. Fox were aware of R.C.M.P. access to Unemployment Insurance Commission data.

(d) Mr. Roger Tassé

Summary of evidence

28. Mr. Tassé's evidence is that he was never told that the R.C.M.P. was obtaining information from other departments and agencies in violation of the law (Vol. 157, pp. 23863-5).

Conclusion

29. We accept Mr. Tassé's evidence and note that it affords some support for our conclusions concerning the state of knowledge of the Solicitors General.

C. IMPLEMENTATION OF R.C.M.P. POLICY FROM 1973 TO 1978
WITH REGARD TO THE LIAISON BETWEEN THE C.I.B. AND
THE U.I.C.

30. In the Second Report, Part III, Chapter 5, although we examined at length the manner in which the C.I.B. developed a working relationship with the U.I.C. and the manner and extent to which confidential information flowed from the U.I.C. to the C.I.B., it was decided to leave the explanation of the various details of the implementation of such R.C.M.P. policy with the U.I.C. to this Report. We now examine this policy implementation on the part of the R.C.M.P., especially from the year 1973 to June 12, 1978, when the flow of confidential information from the U.I.C. to the C.I.B. was terminated. This perusal of policy implementation will centre chiefly upon the individuals who were most responsible in developing the mechanism whereby such information was channelled to the C.I.B.

31. During the period 1973 to 1975 Assistant Commissioner (then Inspector) Jensen was the Officer in Charge of the Commercial Crime Branch at Headquarters. During this time he negotiated an arrangement with the U.I.C. whereby it was agreed that the lines of communication between the two organizations would be between the Commercial Crime Branch at Headquarters of the R.C.M.P. and the Chief of the Benefit Control Section of the U.I.C. (Vol. 58, p. 9551, Ex. H-1, p. 59).

32. At this point, Inspector Jensen was responsible for appointing those R.C.M.P. members who were to act as contacts with the U.I.C. (Ex. H-1, pp. 61-64; Vol. 58, p. 9551). When examined as to the instructions given to these personnel charged with the administration of the policy, Assistant Commissioner Jensen testified that they were "to utilize it of course in terms of seeking information with respect to criminal offences and situations where it was in the public interest to do so". He also stated that these personnel had a discretion to pass along a request for information to the U.I.C. and that "they could exercise their discretion or not" (Vol. 58, pp. 9952-4).

33. He was then asked what instructions were given by him to his subordinates concerning this discretion. He first testified that given their experience with the R.C.M.P. "...I had confidence in their ability to exercise discretion, otherwise they wouldn't have been in the position they were in or the rank that they held...". When asked whether this meant that no instructions were given concerning the exercise of discretion he replied that they were instructed to seek the information when it was sought in "the investigation of a criminal offence, or it is in the public interest, the policy that is cited in the October 3rd memorandum..." and that in respect to the investigation of a criminal offence "There is no discretion on that part of it". However, Mr. Jensen then testified that requests with respect to criminal offences would not automatically be passed on and stated "They could. They had that discretion, but they had a discretion of their own to exercise". On the evidence it seems clear that no instructions were given concerning the exercise of this discretion (Vol. 58, pp. 9555-62).

34. From 1973 to 1978 the various R.C.M.P. field officers contacted C.C.B., Headquarters, via a direct access computer terminal to request the information from U.I.C. The persons who operated the terminals were clerks or secretaries. Since the policy of the Force concerning the occasions on which the U.I.C. arrangement could be used had not been disseminated to the field, C.C.B. Headquarters had no way of knowing whether anyone in authority in the field had cleared the request before the clerk or secretary transmitted it via the computer terminal to C.C.B. Headquarters. It was for this reason that it was imperative that the purpose of the request for information from the field be made known to C.C.B. Headquarters. Assistant Commissioner Jensen agreed that this information was vital to the exercise of discretion by the C.C.B. Headquarters personnel assigned to administer the 1973 arrangement. Mr. Jensen further agreed that it would not be appropriate to seek information from the U.I.C. if C.C.B. Headquarters personnel did not first ascertain the nature and purpose of the request (Vol. 58, pp. 9556-60; 9578, 9589-90).

35. From 1975 to 1978 a public servant, employed in a clerical position by the R.C.M.P., was designated to receive requests for information from the field. Assistant Commissioner Jensen testified that up to 1976 this public servant was told to obtain specific instructions from Sergeant Cooper or Sergeant Butt about each request for information. In 1976 this same public servant was instructed to respond to a request for information, provided only that the request referred to a crime. There was no limitation as to the type of crime.

36. The unrestricted access to U.I.C. confidential information, provided that it related to a crime, continued uninterrupted until late in the year 1976. At that time the R.C.M.P. officer responsible instructed the public servant to respond only to requests for information relating to the list of crimes set out in an arrangement made in 1972 between the C.I.B. and the U.I.C. and which is described in Part III, Chapter 5, of the Second Report. Any requests relating to any category of crime not mentioned on the list, were to be cleared beforehand with the R.C.M.P. Officer in Charge.

37. As Assistant Commissioner Jensen has been mentioned frequently, it should be said that there is no evidence that, while he was involved in making arrangements for access to U.I.C. data, he was aware that such access as representatives of the U.I.C. were prepared to provide might give rise to a legal problem. He told us that until June 12, 1978, when he was informed that the Canada Employment and Immigration Commission was no longer going to provide information from the Central Index because there was a problem of statutory interpretation and we were about to hold hearings into this subject, he was not aware that there was a legal problem and had always regarded any problem as being one "primarily" of "administration". He testified that he

thought that we were the recipients of information from an information source which, in its discretion, could lawfully pass it on to us. So, therefore, it was not a legal problem for the R.C.M.P.

(Vol. 58, pp. 9638-48.)

In these circumstances we find no fault with Assistant Commissioner Jensen's conduct.

38. With respect to the extent and prevalence of this access by the C.I.B. to confidential information on the records of the U.I.C. reference should once again be made to the abovementioned Part III, Chapter 5 of the Second Report. Finally, it should be noted that all access to the U.I.C. confidential information was terminated on June 12, 1978.

D. KNOWLEDGE OF SENIOR MEMBERS OF THE R.C.M.P. AND OF MINISTERS OF THE LIAISON BETWEEN THE C.I.B. AND THE DEPARTMENT OF NATIONAL HEALTH AND WELFARE

39. There is documentary evidence to justify the inference that in 1968 Superintendent (later Commissioner) Nadon knew, from the reports that were received, that in some Divisions members of the Force were obtaining information from sources in the Department of National Health and Welfare in circumstances prohibited by statute. There is no evidence that when he became Commissioner he took steps to bring such access to a halt. Nor, however, is there any documentary evidence that access was still being exercised after 1973. Mr. Nadon became Commissioner in 1974. No testimony was taken from any witness concerning this matter.

40. There is no evidence before us to indicate that any Minister, whether Solicitor General or otherwise, knew that such access was being obtained and that some members of the R.C.M.P. may have been abetting the commission of an offence.

CHAPTER 5

ACCESS TO AND USE OF CONFIDENTIAL INFORMATION HELD BY THE FEDERAL GOVERNMENT — SECURITY SERVICE

1. In our Second Report, Part III, Chapter 6, we examined the manner in which the Security Service of the R.C.M.P. attempted to obtain access to government information on individuals and its persistent effort to develop sources of information within various government departments. Such departments included the Unemployment Insurance Commission, the Department of National Revenue and the Department of National Health and Welfare. The liaison which developed between the Security Service and these government departments was examined, as were the legal consequences. During the course of examining the relationship which developed between source X in the Department of National Revenue and the Security Service, an issue arose of different magnitude, namely, whether the Department of National Revenue at a deputy ministerial level, or even at a ministerial level, had agreed to supply the Security Service with information in circumstances which would violate the confidentiality provisions of the Income Tax Act. The pivotal evidence tending to indicate that such an agreement had been reached was found in a memorandum for file, dated August 18, 1971, (Ex. MC-8, Tab 14) by Assistant Commissioner L.R. Parent, Deputy Director General of the Security Service, which read as follows:

1. Reference is made to letter addressed to the Honourable Herb Gray, Minister of National Revenue, by the Solicitor General dated July 27, 1971.

2. On this date Deputy Minister S. Cloutier of the Department of National Revenue (Taxation) contacted the undersigned in this connection. Deputy Minister Cloutier advised that agreement had been reached, however, no reply would be forthcoming from his office to our letter of July 27th for obvious reasons. The Department agrees to provide information to S&I in this area strictly on a confidential basis, providing that S&I undertakes not to disseminate this information outside the Directorate. In other words, information received by S&I should not be disseminated to CIB or other agencies. All S&I enquiries should be addressed to _____.

The conclusion of the second paragraph referred to X by name and position.

2. We shall therefore examine the events which occurred between the Security Service and Mr. Sylvain Cloutier, the Deputy Minister of National

Revenue, in regard to affording the Security Service access to confidential information.

3. We also examine the extent to which this general practice of the Security Service of obtaining confidential information from various government departments was known and reviewed at the level of Ministers, senior government officials, and senior members of the R.C.M.P.

A. COMMUNICATIONS BETWEEN THE SECURITY SERVICE AND MR. SYLVAIN CLOUTIER

Summary of evidence

4. There is one development, which occurred in 1970, which we did not mention in Part III, Chapter 6, of our Second Report, for it was not essential to the description of the relationship between the Department of National Revenue and Source X which we set out in that chapter, and we considered it would be more relevant to the matters here reported on. We refer to a memorandum by the Director General, Mr. Starnes, dated April 15, 1970, (Ex. MC-8, Tab 8) which recorded that on that day he had had lunch with Mr. Cloutier. His diary also indicates that he was to have lunch that day with Mr. Cloutier at the Rideau Club. The memorandum must be quoted at length:

...we discussed, among other things, the possibility of making some arrangements for members of this Directorate to have access to income tax information. Mr. Cloutier at once referred to discussions which have been taking place between the RCMP and the Department of National Revenue to enable income tax information to be used for criminal investigations. He mentioned that joint proposals had been worked out and were now before Ministers for their consideration. Mr. Cloutier said that he was very sympathetic towards the RCMP's requirements and was inclined to take a rather relaxed view of Section 133 of the Income Tax Act. In particular, he believed that this section of the Act could be interpreted in such a way as to make this kind of information available to the RCMP if it was likely to result in recovery of lost monies. Mr. Cloutier wondered, therefore, whether the particular requirements of the Security and Intelligence Directorate could not be met within the framework of the proposals which are now before the Ministers.

I explained to Mr. Cloutier, using various examples, the kind of purposes for which we would like to have access to a limited number of income tax records, ...

Following a discussion of the problem, Mr. Cloutier said that he felt it would be possible to interpret Section 133 in such a way as to provide us the information we were seeking ... on the grounds that this could lead to recovery of money which was owing to the Crown although he recognized that, in fact, there might be very few occasions when this would be possible or even desirable... In the circumstances he said his earlier suggestion that we might bring our requirements within the framework of the request now before Ministers might not be practicable. Instead, depending upon the outcome of ministerial consideration of those proposals, he suggested we might put a joint submission to the appropriate cabinet committee (presumably Cabinet Committee on Security and Intelligence) aimed at obtaining

ministerial approval for the use of income tax records for investigation into cases affecting the national security. Mr. Cloutier said he would be very willing to co-operate with us in the preparation and submission to our respective Ministers of such a memorandum.

Mr. Starnes has no independent memory of the conversation with Mr. Cloutier that day but says that he was in the habit of making accurate contemporaneous memoranda of conversations and events. He has no recollection of being aware at that time that there was already a relationship in existence between someone in the Department of National Revenue and the Security Service, by which the Department provided information.

5. However, Mr. Cloutier, in his testimony before us, denied that during the period that he was Deputy Minister of National Revenue (Taxation) he was aware of any arrangement under which officials of the Department were providing the Security Service with tax information. His testimony was that he had no recollection of meeting Mr. Starnes for lunch on April 15, 1970, although his calendar recalls that he did have lunch with him at Mr. Starnes' invitation on that date. He has no recollection of what was discussed. He says that any reference he may have made to his having regarded section 133 in a relaxed manner must have referred to the work he had been doing with regard to the proposal that members of the Criminal Investigations Branch of the R.C.M.P. should be recognized as authorized officials under section 133 for purposes of criminal investigations. In that regard, his feeling was that any tax monies collected as a result of such investigations would be less than the cost of D.N.R. resources devoted to the programme, that he therefore could not determine the matter himself and the determination should be made by government. Had it not been for the problem of allocation of resources, it was his view that he could have determined, as Deputy Minister, that the members of the C.I.B. generally could be designated as authorized officials. He had no authority to enter into an agreement with the Security Service.

6. In the Second Report we examined the efforts by senior members of the R.C.M.P., and more particularly Director General Starnes and Commissioner Higgitt, to enter into an agreement with the Department of National Revenue whereby information on individuals would flow from that Department to the Security Service. We looked at various communications from the Security Service, including memoranda drafted by Mr. Starnes dated September 15 and 23, 1970, whereby he attempted to persuade Commissioner Higgitt to encourage the Solicitor General to strike an agreement with the Minister of National Revenue.

7. After these memoranda there is no record of any further development until the months of May to September 1971. During this period the negotiations by the R.C.M.P. Criminal Investigation Branch with the Department of National Revenue continued. In May, Mr. Parent, in a memorandum to Mr. Starnes, suggested that the C.I.B. negotiations were not progressing and that the Security Service should discuss its own problems with the Minister. Consequently, on June 3, 1971, Mr. Starnes wrote to Mr. Goyer concerning access to the records of several departments, including the Department of National

Revenue, pointing out that it was "necessary to have access to the records of the Department of National Revenue, Income Tax Branch, which is difficult to do in the face of section 133 of the Income Tax Act". The letter also said that he recognized

... that there would be political and other difficulties in the way of seeking to amend legislation merely to meet the needs of the Security Service, but, in many cases, and we believe that with Ministerial agreement, arrangements could be worked out with the different departments and agencies concerned to meet our requirements within the framework of existing laws and in a manner which would attract no attention or criticism.

(Ex. MC-8, Tab 11.)

Consequently, on July 27, 1971, Mr. Goyer wrote to the Honourable Herb Gray, Minister of National Revenue, outlining the needs of the Security Service and saying that in order to satisfy these needs it "would be necessary to have access to your Income Tax Branch records". He observed that "section 133 of the Income Tax Act creates difficulties in this regard", but proposed discussions between officials of the two Departments as to "whether the requirements of the Security Service could in fact be met within the framework of existing laws and regulations and in a manner which would attract no attention or criticism". In answer, a letter dated August 4, 1971, (Ex. MC-8, Tab 13) was prepared by Mr. Cloutier, and was signed by Mr. Gray and sent to Mr. Goyer. It stated that the Deputy Minister of National Revenue was on holidays, and that the subject matter required his consideration and should not be dealt with in his absence. Mr. Cloutier testified that this letter was prepared for Mr. Gray's signature in the hope that it would have the result that the matter would "go away", be forgotten. However, Mr. Bourne did not forget, for on October 18, 1971, he wrote to Mr. Starnes, sending copies of letters which had been received by Mr. Goyer from some Ministers, but pointing out that "a final reply from the Minister of National Revenue has not yet been received". Mr. Bourne suggested that Mr. Starnes follow the matter up at the level of officials. On the letter a longhand note by Mr. Starnes records for file purposes that he had discussed this matter with Inspector Shorey.

8. Meanwhile, on August 18, 1971, Assistant Commissioner Parent prepared the memorandum for file (Ex. MC-8, Tab 14), quoted in full earlier in this chapter, in which he referred to the letter which Mr. Goyer had sent to Mr. Gray on July 27. (Mr. Parent did not testify on this or any other matter because he has unfortunately been suffering from a degenerative illness which, we are satisfied, made him unable to give evidence before us. It has, therefore, been necessary for us to rely upon Mr. Parent's written records.)

9. While he did not deny it, Mr. Cloutier testified that he has no recollection of ever having met Mr. Parent, or of hearing that name in connection with the R.C.M.P., or of having a conversation with Mr. Parent to the effect referred to in Mr. Parent's memorandum of August 18, 1971. He surmises that he probably called, or asked his secretary to call, either the Commissioner or Mr. Starnes to tell him that the Department of National Revenue would not be replying to the letter Mr. Goyer had written to Mr. Gray. However, he says

that he is baffled as to the suggestion that he had verbally made an agreement over the telephone. He regards this as inconsistent with the lengthy and very careful discussions which had been held with respect to the arrangement with the Criminal Investigations Branch, where there was a likelihood of revenue. Further, he regards it as unlikely that, as a responsible senior official, he would have made a commitment on behalf of the Department of National Revenue when six days before August 18 his appointment as Deputy Minister of the Department of National Defence had been announced. Consequently, he says he has a "moral certitude" that he did not enter into such an agreement, and therefore that he did not designate an official to carry it out. He says that if he did talk to Mr. Parent, he could possibly have referred to the C.I.B. agreement which had just been completed to his satisfaction at that time. The Deputy Solicitor General, Ernest Côté, and Mr. Cloutier, had both signed the memorandum of understanding, and "a couple of weeks" previously the two Ministers had signed a submission to Cabinet. (Actually, Mr. Gray had signed it on June 11.) Mr. Cloutier suggests that it is a possibility that in talks with Mr. Parent he might have explained how the agreement with the C.I.B. operated, and Mr. Parent may have misunderstood.

10. Mr. Cloutier says that section 133 was sacrosanct, that he had written for publication on the subject when he was Deputy Minister, and that he was not likely to have played "very very footloose with a cornerstone of the administration of the Department". He has no recollection of having discussed, with either of the two Ministers of National Revenue under whom he served, any question of providing information to the Security and Intelligence Branch of the R.C.M.P. He has no recollection of ever having discussed Mr. Goyer's letter of July 27, 1971, with Mr. Gray. On the other hand, he says he probably told Mr. Gray "we should have no truck to do with that and I will tell the R.C.M.P."

11. Mr. Cloutier says that he was not, on his own authority, willing to give to Mr. Starnes information on potential taxpayers other than for the purpose of collecting taxes. In assessing Mr. Cloutier's testimony against the record made by Assistant Commissioner Parent, it is necessary to refer again to the discussion between Mr. Starnes and Mr. Cloutier at lunch on April 15, 1970, as recorded by Mr. Starnes in a memorandum which we have already quoted at length. It will be observed that, on the face of Mr. Parent's memorandum, Mr. Cloutier was prepared to go beyond the bounds of section 133.

12. It is also worthy of note that a Security Service Source, who was employed in the Department of National Revenue at Headquarters, and who testified before us, denied knowing Mr. Parent, or being aware of any contact that took place between Mr. Cloutier and Mr. Parent, or between Mr. Cloutier and anyone else in the R.C.M.P. Security Service. We discussed the arrangement between the Security Service and X, in Part III, Chapter 6, of our Second Report, and our conclusions about that relationship are contained in Part VI, Chapter 3, of this Report.

Conclusion

13. We think that it is a near certitude that Mr. Starnes and Mr. Cloutier did have lunch on April 15, 1970, and that Mr. Starnes, who is quite meticulous, made an accurate record of what was said. We note that Mr. Cloutier is recorded as having suggested no more than that a joint submission be made to a Cabinet Committee. There is nothing in the record made by Mr. Starnes which would suggest in any way that Mr. Cloutier had in mind any clandestine or illegal relationship. Consequently, Mr. Starnes' own record supports Mr. Cloutier's adamant assertion to us that he would not likely have played "footloose" with a cornerstone of the administration of the Department.

14. We turn to our conclusion in regard to the memorandum written by Mr. Parent on August 18, 1971. It will be recalled that Mr. Parent has at no time testified before us in regard to this matter or any other matter, because of his state of health. Therefore we do not have the benefit of his testimony on this point. We note that his memorandum was written one year and four months after the luncheon between Mr. Starnes and Mr. Cloutier; thus we have no indication that during those sixteen months there had been further discussions between the Security Service's senior management and Mr. Cloutier. We do not know what Mr. Parent meant by his memorandum, for we are perfectly satisfied that neither Mr. Cloutier nor his Minister (the Honourable Herb Gray) had "agreed", whether formally or in some informal or under the table manner, that the Department of National Revenue would supply information to the Security Service, the disclosure of which would have violated the confidentiality provisions of the Income Tax Act. For Mr. Cloutier to have "agreed" to the provision of such information would have been contrary to the position that he took with Mr. Starnes sixteen months earlier. In the interval, Mr. Cloutier had been conducting negotiations with the R.C.M.P. with regard to co-operation between his Department and the R.C.M.P.'s Criminal Investigations Branch, which bore fruit after his departure from the Department, when a memorandum of understanding was entered into on April 27, 1972, between the Department of National Revenue (Taxation) and the Department of the Solicitor General. If there was a telephone conversation between Mr. Parent and Mr. Cloutier, we are satisfied that any "agreement" which Mr. Cloutier would have referred to was in regard to criminal investigations and moreover was not an "agreement" to provide information the provision of which was prohibited by the Act. We think that Mr. Parent must have misunderstood what Mr. Cloutier was referring to, and this would not be surprising, for there is every likelihood that Mr. Parent was not familiar with the negotiations that were being conducted between the Criminal Investigations side of the Force, and the Department of National Revenue. The compartmentalization of information, between the Criminal Investigation side of the R.C.M.P. on the one hand, and the Security Service on the other, was such that it would not be surprising that Mr. Parent would be ignorant of developments on the C.I.B. side. As for the sentence in Mr. Parent's memorandum in which he states that Mr. Cloutier had advised that "no reply would be forthcoming from his office to our letter of July 27 for obvious reasons", if Mr. Cloutier did say that, those words are open to a reasonable construction which

is consistent with an intention on Mr. Cloutier's part to behave legally. That construction is that Mr. Cloutier would not have wanted to place on the record, through correspondence, any reference to the provision of information to the Security Service and how it was to be provided, for fear someone in the Department of National Revenue might have access to a copy of such a letter and might reveal the existence of such an arrangement to unauthorized persons.

B. KNOWLEDGE BY SPECIFIC SENIOR MEMBERS OF THE R.C.M.P., SENIOR GOVERNMENT OFFICIALS AND MINISTERS OF THE LIAISON BETWEEN THE SECURITY SERVICE AND THE DEPARTMENT OF NATIONAL REVENUE

(a) Commissioner W.L. Higgitt

Summary of evidence

15. Mr. Higgitt, who was Commissioner from late 1969 until 1973, was aware that the Security Service obtained the co-operation of the Department of National Revenue (D.N.R.) (Vol. 111, p. 17126). He was asked whether he knew how it came about or how the co-operation functioned. He testified that the co-operation was "generated" by the correspondence between Mr. Starnes and Mr. Goyer in which Mr. Starnes requested Mr. Goyer's assistance in obtaining information from government departments. But Mr. Higgitt, when asked how he knew that that correspondence gave rise to the relationship, could say no more than that he *presumed* that there was a response from Mr. Gray, the Minister of National Revenue (Vol. 111, p. 17127). (We have no evidence of any such response.)

16. Mr. Higgitt does not recall Mr. Goyer doing anything more than writing to Mr. Gray and discussing the matter with Mr. Higgitt and Mr. Starnes, in order to attempt to reach an agreement between the Security Service and the D.N.R. He has no memory of whatever conversation there was between Mr. Goyer and himself or Mr. Starnes (Vol. 111, p. 17121).

17. Mr. Higgitt was aware that the data provided to the Security Service and the use to which it was put by the Security Service, in general, in no way related to the Income Tax Act. He was also aware that there was a difficulty created by section 133 of the Income Tax Act (Vol. 111, p. 17117).

Conclusion

18. Commissioner Higgitt knew that the Security Service was obtaining information from the Taxation Division of the Department of National Revenue, and that, at the very least, there was a legal issue involved. Yet he took no steps to stop the practice, or obtain legal advice from the Department of Justice.

(b) Mr. John Starnes

Summary of evidence

19. Mr. Starnes stated that he had no recollection of the fact that there were arrangements whereby members of the Security Service could obtain informa-

tion from the records of the Department of National Revenue (Vol. 149, pp. 22826, 22835). He then stated that his knowledge depended on the point in time being referred to but said firmly that as of 1970 he did not know of such arrangements (Vol. 149, p. 22871). He subsequently said that he "must have been" aware of the arrangements (Vol. C96, p. 12849).

Conclusion

20. There is no evidence to suggest that Mr. Starnes knew of the arrangement that existed with X, the Security Service source who was an employee of the Department of National Revenue. Indeed, our knowledge of the sensitivity of members of the Security Service with regard to the identity of human sources would support the inference that, as there was no need for Mr. Starnes to know that access to tax information existed, there was no reason to tell him. Assistant Commissioner Parent, the Deputy Director General on August 20, 1971, in the memorandum to the Commanding Officer of "A" Division (Ottawa), in which he stated that the Deputy Minister had agreed verbally to provide information to the Security Service (an agreement and an assertion which we have concluded did not exist), referred to X by the source code number already in use. From this it is reasonable to infer that he knew of the existing arrangements for access. However, because Mr. Parent could not testify, we lack his evidence as to whether he told Mr. Starnes the whole story. We do know that on May 20, 1971, Mr. Parent wrote a memo to Mr. Starnes concerning the whole question of access to information in the possession of government departments (Ex. MC-7, Tab 16). He listed several departments, one of which was the Department of National Revenue (Income Tax Division), and said in respect of them that "we have had varying degrees of co-operation [with them] in the past", but that they "have now applied controls to the extent that we are virtually without access in all...[the departments]... listed"... He also discussed the lack of progress being made by the C.I.B. in obtaining Cabinet approval for the arrangement it was seeking, and suggested that the Security Service should launch its own initiative, although nowhere in the memorandum did he advise Mr. Starnes clearly that a firm arrangement was already in existence with a source. In our opinion Mr. Parent's memorandum connoted that for all practical purposes access to information in the hands of the Income Tax Division of the Department of National Revenue was no longer available to the Security Service. Consequently, we conclude from the evidence that Mr. Starnes was not aware that such access continued. There is no reference in Mr. Parent's memorandum to any question of illegality with respect to such access.

(c) Mr. M.R. Dare

Summary of evidence

21. Mr. Dare was aware of the arrangement for access from about 1974. He knew that it was solely for the purposes of the Security Service and in no way intended for the purpose of the collection of income tax (Vol. 126, p. 19707). But he says that he did not consider that it was illegal and that at no time was he aware of the existence of section 133 of the Income Tax Act (Vol. 126, p.

19709). Consequently, he did not address his mind to whether the arrangement was contrary to the instructions he gave in his letter of May 22, 1975, that investigations were to be "within the limits of the law" (Vol. 126, p. 19714).

Conclusion

22. Mr. Dare knew of this access but we believe that he did not know of the legal problem or address his mind to it.

(d) Commissioner Maurice Nadon

Summary of evidence

23. Commissioner Nadon testified that it was "standard practice" for the Security Service to obtain information from the D.N.R. But, he told us, as far as he was concerned it was legal because of the nature of the information that was provided (Vol. C61, p. 8492).

Conclusion

24. Commissioner Nadon knew of this practice but thought it was legal.

(e) The Honourable George T. McIlraith

Summary of evidence

25. Commissioner Higgitt stated, in a longhand note to Mr. Starnes on September 23, 1970, that he had raised the issue of access to income tax records with Mr. McIlraith "a number of times" and said he would "do so again". The note continued:

He has not as yet been able to get the Ministry of National Revenue to give his department the necessary instructions to cooperate even though he seems to be favourably inclined himself...

(Ex. MC-8, Tab 9.)

Commissioner Higgitt was not asked whether he told Mr. McIlraith, but it will be recalled that he testified that neither he, nor, as far as he knows, anyone else on behalf of the Force told Mr. McIlraith (or Mr. Goyer) that the Department of National Revenue was providing tax information to the C.I.B. (Vol. 85, p. 14023). If he did not tell Mr. McIlraith about the C.I.B.'s arrangements, it is unlikely that he discussed with him the even more sensitive matter of the Security Service.

26. There is no evidence that Mr. Starnes told Mr. McIlraith of this access. Indeed, we have found that he did not know of it. Therefore, he could not have told Mr. McIlraith.

Conclusion

27. We have no reason to believe that Mr. McIlraith knew of this practice.

(f) The Honourable Jean-Pierre Goyer

Summary of evidence

28. Mr. Goyer denies having had any knowledge that information obtained by the D.N.R. under the Income Tax Act was provided to the Security Service (Vol. C50, pp. 6845-6). He says that, apart from having written to Mr. Gray on July 27, 1971, and subsequently being told by Mr. Gray that his Department was studying the matter, he had no contact whatever with anyone in the D.N.R. about his request that the D.N.R. provide income tax information to the Security Service.

Conclusion

29. There is no evidence to suggest that Commissioner Higgitt or Mr. Starnes or anyone else from the R.C.M.P. told Mr. Goyer that the Security Service had access to this kind of information. We believe that he had no knowledge of access.

(g) The Honourable Warren Allmand

Summary of evidence

30. Mr. Allmand denies that he was aware of any relationship between the Department of National Revenue and the Security Service whereby the Department provided tax information to the Security Service (Vol. 114, p. 17637). He also testified that he was never told by the Security Service they needed access to such information in order to carry out their duties — in other words, the issue was not raised with him, even in general terms. He does not have a clear memory of co-operation between the Department and the C.I.B. in connection with organized crime (Vol. 114, p. 17638-9). Mr. Dare told us that he does not recall any discussion with Mr. Allmand on this matter (Vol. 128, pp. 19909-10).

Conclusion

31. There is no evidence to suggest that anyone told Mr. Allmand of this practice. We believe that he had no knowledge of the access.

(h) The Honourable Francis Fox

32. We have no evidence that Mr. Fox was informed of this practice.

(i) Mr. R. Tassé and Mr. R. Bourne

Summary of evidence

33. Mr. Tassé testified that he did not know that members of the Security Service, whether pursuant to an agreement or not, obtained information from employees of the D.N.R. (Vol. 157, p. 23852). Mr. Bourne said that he was not aware of any agreement that was reached in connection with access by the Security Service to information in the possession of the D.N.R. (Vol. C85, p. 11682).

Conclusion

34. We accept the evidence of these public servants that they did not know of this relationship. Their ignorance of it fortifies our conclusion that Mr. Goyer, Mr. Allmand and Mr. Fox were unaware of its existence.

(j) The Honourable Bud Cullen

Summary of evidence

35. Mr. Cullen, who was Minister of National Revenue from September 26, 1975, to September 14, 1976, testified that at no time did he know that any member of the Department of National Revenue furnished to the Security Service, for purposes unrelated to the Income Tax Act, information which had been obtained from taxpayers under that Act (Vol. 117, pp. 18235-6).

Conclusion

36. The evidence of Mr. Cloutier, the Deputy Minister, was that he was not aware of the relationship with the Security Service. It supports Mr. Cullen's evidence that *he* did not know either. Furthermore, everything in the evidence of X (summarized in Part III, Chapter 6, of our Second Report) points to that source having acted on his or her own initiative and without telling anyone else in the Department. There is no evidence that suggests knowledge on Mr. Cullen's part, and we believe that he did not have knowledge.

C. KNOWLEDGE BY SENIOR MEMBERS OF THE R.C.M.P., AND
MINISTERS OF THE LIAISON BETWEEN THE SECURITY
SERVICE AND THE UNEMPLOYMENT INSURANCE COM-
MISSION

(a) Mr. John Starnes

Summary of evidence

37. Mr. Starnes testified that he has no recollection of being aware of any *ad hoc* arrangements which may have existed in the field between members of the Security Service and employees of the Unemployment Insurance Commission (Vol. 149, pp. 22799, 22824-26). A memorandum written by Assistant Commissioner Parent to Mr. Starnes on May 20, 1971, (Ex. MC-7, Tab 16) informed him that the R.C.M.P. had had co-operation from the Unemployment Insurance Commission, but that access to their information was now virtually non-existent.

Conclusion

38. We conclude that Mr. Starnes was aware that information had been obtained by the Security Service from the Unemployment Insurance Commission and that Mr. Parent's memorandum informed him that such access to information was no longer available. There is no reference in Mr. Parent's memorandum to any question of illegality with respect to such access.

(b) Others

39. With respect to Messrs. Higgitt, Nadon and Tassé and former Solicitors General McIlraith, Goyer, Allmand and Fox, our perception of their knowledge of the liaison between the Force and the U.I.C. may be found in Chapter 4 of Part III of this Report.

D. KNOWLEDGE OF SENIOR MEMBERS OF THE R.C.M.P. OF THE LIAISON BETWEEN THE SECURITY SERVICE AND THE DEPARTMENT OF NATIONAL HEALTH AND WELFARE

(a) Mr. John Starnes

Summary of evidence

40. The memorandum written to Mr. Starnes on May 20, 1971, mentioned previously, (Ex. MC-7, Tab 16) informed him that the R.C.M.P. had had co-operation from the Department of National Health and Welfare, but that access to their information was now virtually non-existent except for some field level sources.

Conclusion

41. We therefore conclude that Mr. Starnes was aware that information had been obtained by the Security Service from the Department of National Health and Welfare and that Mr. Parent's memorandum informed him that such access to information was no longer available. There is no reference in Mr. Parent's memorandum to any question of illegality with respect to such access.

(b) Others

42. With respect to other senior members of the R.C.M.P. and Ministers, our perception of their knowledge of any liaison between the Force and the Department of National Health and Welfare may be found in Chapter 4 of Part III of this Report.

CHAPTER 6

COUNTERING

1. In our Second Report, Part III, Chapter 7, we described the operational technique known as "countering". Because of the numerous possible interpretations of this term, we limit our definition of "countering" in this chapter, as we did in our Second Report, to any positive steps that may be taken as a result of the collection and analysis of information, other than the mere reporting of intelligence to government. Here we deal with the extent to which senior government officials, senior R.C.M.P. members and ministers were aware of countering measures undertaken by the Force.

2. In our Second Report we noted that many perfectly lawful forms of countermeasures were well known in the Security Service and in the senior ranks of the R.C.M.P. generally. Disruptive tactics which included an element of illegality (such as some of the Checkmate operations), were not as widely known. Specific Checkmate operations, for example, were usually known only to those directly involved in their planning and execution. While senior members of the Security Service were aware of some cases, there is no evidence that any Minister or public servant outside the R.C.M.P. knew of such occurrences, or were even made aware that unlawful methods *might* be used. Nor is there any evidence that any Minister or senior official let it be known that unlawful countermeasures would be tolerated.

3. In our Second Report, also in Part III, Chapter 7, we also described a hybrid type of countermeasure — one that was lawful, yet inappropriate for a security intelligence agency. Examples of such activities included inducing employers to discharge subversive employees, leaking information to the media about the subversive characteristics of individuals or undertaking "conspicuous surveillance" of domestic groups. While our inquiry could not reach into the Cabinet room, except as to allegations of implication of Ministers in conduct not authorized or provided for by law, there is no evidence before us that senior government officials or Ministers knew of such activities. There is evidence that in the case of each of the last two activities mentioned, (we cannot say whether there were other instances), an operation was authorized by senior members of the Security Service. There is evidence that, at high levels within the Security Service and in the R.C.M.P. generally, and among Ministers and senior officials of government, there was acceptance of two further lawful activities: the 'defusing' programme, in particular as a prelude to visits by certain foreign dignitaries and international sporting events held in Canada, and the Security Service's participation in publicizing security threats outside the ranks of government, at least in the form of addresses by the Director General in public meetings and to private groups.

CHAPTER 7

PHYSICAL SURVEILLANCE

1. In our Second Report, Part III, Chapter 8, we discussed the legal and policy issues involved in the investigative practice known as physical surveillance. Here we examine in detail the extent to which Ministers, and senior members of the R.C.M.P. were aware of, approved of and responded to the use of this technique and the legal and policy issues that arose from it. There was no evidence either through hearings or an examination of R.C.M.P. files that this technique was discussed with senior government officials. It is reasonable to assume, however, that some senior government officials who were closely involved with the R.C.M.P. were aware that the R.C.M.P. might have committed violations of traffic laws and other provincial statutes in the course of physical surveillance. (See, for example, Mr. Robertson's comments quoted in Part II of this Report.)

2. The statutes which appear to have been violated in physical surveillance operations frequently have not posed consequences as serious as those which have been violated, for example, in undercover operations, which may have involved the commission of more serious criminal offences. Accordingly, awareness by senior R.C.M.P. members of illegalities arising from physical surveillance operations may be thought to have a lesser significance here than it does in other areas we have examined. Nonetheless, as we indicated in our Second Report, all practices that violate the law — even “minor laws” — should be a matter of concern to members of the R.C.M.P., senior government officials and to those charged with the responsibility of accounting to Parliament for the R.C.M.P.

(a) The Honourable G.J. McIlraith

Summary of evidence

3. At the time of his appearance before us, Senator McIlraith appeared not to be aware of the meaning of the term “Watcher Service”. At one point he asked Commission counsel to explain the term to him (Vol. 120, p. 18801). Senator McIlraith told us that he had no knowledge of the registration by members of the Security Service or the R.C.M.P. in a hotel under a false name, although he admitted that this would be necessary if they were following someone. Even at the time of his testimony, he stated that he was unsure whether such registrations were illegal in all provinces (Vol. 120, pp. 18799-800). Mr. McIlraith told us he never gave any thought to the possibility that members of the Security Service violated traffic laws in the course of their duties (Vol. 120, p. 18801). He also testified that the subject of “dummy” registration of motor

CONTINUED

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vehicles was never discussed with him (Vol. 120, p. 18802) and he denied any discussion taking place with Mr. Starnes or anyone else regarding the use of false documents to establish a false identity for a member of the R.C.M.P. or a human source (Vol. 120, pp. 18804-5). Mr. Starnes told us, however, that "certainly" Mr. McIlraith would have been knowledgeable about the difficulties of the Watcher Service and "some of the things" that they might be required to do (Vol. 106, p. 16641).

Conclusion

4. Our experience in this inquiry leads us to infer that by and large practices we have referred to here were not regarded by members of the R.C.M.P. as being of much legal delicacy prior to our Inquiry. Therefore we do not think there was even any thought devoted to whether the successive Ministers should be made aware of the practices. Even in the case of a serious matter, such as using R.C.M.P. facilities to fabricate identity documents apparently issued by a province, we think it unlikely, based on the general evidence we have heard as to the relationship between the R.C.M.P. and the Solicitor General, that the question would have been raised with the Minister. In the absence of any specific evidence that Mr. McIlraith knew of any illegal activities of the R.C.M.P. in the course of physical surveillance, we conclude that it is unlikely that the problems were discussed with him or that he ever turned his mind to them.

(b) The Honourable Jean-Pierre Goyer

Summary of evidence

5. Shortly after succeeding Mr. McIlraith, Mr. Goyer visited a Security Service garage containing surveillance vehicles and associated equipment (Vol. C50, pp. 6838-40). Mr. Goyer told us that it was possible that he had asked officials at the garage if their operations were conducted in accordance with the law, but he assumed that everything was done according to the law (Vol. C50, p. 6840). He said that he was told there that licence plates were changed on the vehicles from time to time (Vol. C-50, p. 6852), but was not aware of any legal problem arising from this practice (Vol. C-50, pp. 6854-55). When questioned if he knew about the use of false documentation by a member of the R.C.M.P. or a source employed by the R.C.M.P. (in this case, in order to allow the person to infiltrate a group more easily), Mr. Goyer replied that the matter had been discussed, but it had not been presented as a problem, and in fact, he had never thought of it as being a legal problem (Vol. C50, pp. 6853-4). Mr. Goyer told us that no one had presented to him as a problem the violation of rules of the road (Vol. C50, p. 6856). He testified that people know, for instance, that Force members sometimes switch licence plates or use false identification, and indicated that no responsible Solicitor General would forbid these legal activities where state security was at stake (Vol. 121, pp. 18882-3). He said that he would have expected Mr. Starnes and Commissioner Higgitt to inform him of legal problems of which they were aware (Vol. C50, pp. 6857). Mr. Starnes stated, however, that he was certain that he tried to explain to Mr. Goyer the problems associated with the Watcher Service but he could not point to a document in this respect (Vol. 108, p. 16746; Vol. 109, p. 16941).

Conclusion

6. Mr. Starnes' evidence about the knowledge of Mr. Goyer, like his testimony with regard to that of Mr. McIlraith, was not sufficiently specific to justify an inference that the R.C.M.P. made Mr. Goyer aware of the illegality of the practices we have described.

(c) The Honourable Warren W. Allmand

Summary of evidence

7. Mr. Allmand testified that, due to time constraints imposed by his duties as Solicitor General, he had to accept R.C.M.P. assertions that it did not commit illegalities (Vol. 115, pp. 17703-4, 17712). He stated that he had been told that the general work that the R.C.M.P. was carrying on, including surveillance, was within the law (Vol. 114, p. 17666). Mr. Starnes told us that at the beginning of Mr. Allmand's term, the Security Service would have discussed problems such as the Watcher Service although Mr. Starnes did not specify to us the exact problems that would have been drawn to Mr. Allmand's attention (Vol. 104, pp. 16363-4; Vol. 109, p. 16941). Yet Mr. Tassé told us that he did not recall any discussions within the period from 1972 to 1975 concerning the obligation of police forces to operate within provincial laws in performing their duties (Vol. 154, pp. 23372-3).

Conclusion

8. We accept the evidence of Mr. Allmand, which is supported by Mr. Tassé's evidence, that none of these practices was raised with him.

(d) The Honourable Francis Fox

Summary of evidence

9. In January 1977 Mr. Fox, Mr. Allmand's successor, asked the R.C.M.P. if their activities were conducted within the law. Mr. Fox testified that Commissioner Nadon and Mr. Dare responded that, except for the A.P.L.Q. incident, there were no incidents "à leur connaissance" (to their knowledge) where the Security Service acted outside the boundaries of the law (Vol. 159, pp. 24396-99).

Conclusion

10. There is no evidence before us to suggest that the R.C.M.P. made Mr. Fox aware of the practices we have described, or that he was aware of them.

(e) Commissioner M.J. Nadon

Summary of evidence

11. Commissioner Nadon testified that he knew that provincial laws and municipal by-laws were being infringed from time to time. He testified that he knew that the Watcher Service may have speeded at times (Vol. C61, pp. 8500-1). He further stated that he knew that undercover agents needed

fabricated documents and that this could violate provincial statutes (Vol. C61, pp. 8501, 8517). He stated that he never knew and was never advised that documents were being fabricated at R.C.M.P. premises (Vol. C61, pp. 8504-5). He stated that he was not aware how identification documents were obtained (Vol. C61, p. 8505). He stated that he knew that fictitious registrations and fictitious licence plates were issued for some cars, but he stated that he was not aware how they were obtained. He assumed that in many cases false licence plates were obtained with the co-operation of the Motor Vehicle Branches of different provinces (Vol. C61, pp. 8506-7). He stated that he was never made aware that licence plates were manufactured at R.C.M.P. Headquarters (Vol. C61, p. 8508). He felt that the practice of obtaining plates with the co-operation of provincial officials may not have been a violation of provincial statutes, although he also stated that the practice could be a "technical" violation (Vol. C61, pp. 8509-11). He stated that there was a good possibility that members registered in hotels under false names, although he stated that he was not aware of any specific place where this was done (Vol. C61, p. 8517). He testified that it was a possibility that members of the Force entered garages to determine the presence of a vehicle, but was not aware of any circumstances when this arose nor was he aware if entering would be a violation of provincial petty trespass legislation (Vol. C61, p. 8521).

Conclusion

12. Commissioner Nadon was aware of the violation of provincial laws and municipal by-laws as a result of physical surveillance activities, including speeding, the use of fabricated identification documents and the use of false licence plates. Yet Mr. Nadon took no steps to stop those practices, which he knew to be illegal. He was also aware of the practices of registering in hotels under false names and entering garages in order to determine the presence of target vehicles, although he was uncertain as to the legality of those practices. We accept that he had no knowledge that documents or licence plates were being manufactured by the R.C.M.P. themselves. With respect to such practices he ought to have made the necessary inquiries to determine whether they were legal. Mr. Nadon's failure to stop practices which he knew to be illegal and his failure to determine the legality of those practices as to which he was uncertain as to their legality were unacceptable.

(f) Mr. John Starnes

Summary of evidence

13. Mr. Starnes told us that as he worked his way into his job as Director General of the Security Service, it became quite clear to him what some of the problems of the Security Service were (Vol. 101, p. 16024). He said that the Watcher Service might have to use false documentation to protect the security of an operation and that the cars which they used needed false or "dummy" registrations (Vol. 101, pp. 16025-6, Vol. 103, pp. 16218-9, 16227-8). Mr. Starnes said that he supposed that some of these techniques would have been in contravention of some provincial or federal law (Vol. 101, p. 16026). He also spoke of an obvious breach of law by the Watcher Service: "When you have

an . . . agent going down a one-way street at 80 miles an hour, and you have to follow him, obviously you are breaking the law" (Vol. 103, pp. 16226-7). Mr. Starnes told us that these were not just potential problems; some of them were problems which the Security Service faced from day to day (Vol. 103, p. 16219). He said that he had hoped that a memorandum entitled "R.C.M.P. Strategy for Dealing With the F.L.Q. and Similar Movements" (Ex. M-22) which he had prepared for a December 1970 meeting of the Cabinet Committee on Security and Intelligence would result in some discussion of these various problems. Mr. Starnes told us that these matters never were in fact discussed specifically (Vol. 103, pp. 16219-20). Mr. Starnes told us that he could not recall whether or not he discussed with Ministers the registering of a visitor in a hotel under a false name although he stated that he was aware of the practice. He stated that the Security Service "probably" must have talked to Ministers about traffic violations and certainly must have discussed dummy registration of a Watcher Service motor vehicle (Vol. 109, pp. 16880, 16933-5, 16940).

Conclusion

14. Mr. Starnes was aware of violations of federal and provincial laws occurring as a result of physical surveillance operations. Specifically, he was aware of traffic offences, the use of false documentation, false registration in hotels and the use of false or "dummy" registrations for surveillance vehicles. In the absence of corroborative evidence, we do not accept Mr. Starnes' broad statement that the Security Service talked to Ministers about traffic violations and dummy registrations. We do not feel that senior members of the R.C.M.P. would have considered the legal problems resulting from surveillance operations were of sufficient concern to bring to the attention of Ministers. Mr. Starnes took no steps to stop those practices which he considered to be illegal and in that respect his conduct was unacceptable.

(g) Mr. M.R. Dare

Summary of evidence

15. We asked Mr. Dare if he was made aware of any problems in the conduct of the Watcher Service that would involve infractions of the law. He replied that he would not be doing his job if he did not have some perception of those problems. He stated that he was reluctant at our public hearing to go into details about the Watcher Service, but referred to infractions such as speeding and going the wrong way down a one-way street, indicating that he knew about "those sorts of things" (Vol. 126, p. 19724).

Conclusion

16. Although we did not ask Mr. Dare in detail about his knowledge of physical surveillance operations, his testimony indicates that he was indeed aware of some of the legal problems resulting from this type of operation. At the very least he knew that surveillance operations would result in violations of provincial traffic laws. It appears that Mr. Dare took no steps to stop these illegal practices and accordingly his conduct was unacceptable.

17. We did not address questions about the matters covered in this chapter to government officials outside the R.C.M.P., other than Mr. Tassé.

General conclusions

18. Whereas the testimony of R.C.M.P. officials indicates almost complete awareness on their part of the illegalities inherent in physical surveillance operations, testimony of Ministers who held the Solicitor General's post shows considerable lack of knowledge, both as to the actual covert techniques involved and, moreover, the legal problems associated with the use of these techniques. There has been no evidence of any weight before us that the R.C.M.P. brought the legal problems arising from physical surveillance operations to the attention of Ministers.

19. The lack of knowledge at the federal ministerial level concerning possible illegal activities occurring during surveillance operations was likely paralleled at the provincial level. Any question of the lack of knowledge by senior provincial officials of these possible violations of the law was, however, largely resolved under a programme carried out in 1978, during the tenure of the Honourable Jean-Jacques Blais as Solicitor General. In our Second Report, Part III, Chapter 8, we described in detail the nature of this programme. There is no need to repeat that discussion here.

20. There may be a temptation to regard the attitude of senior members of the R.C.M.P. toward the types of violations of the law that have been discussed in this chapter as being something that may be overlooked because they do not involve criminal offences (apart from the possibility of conspiracy to violate a provincial statute, which may be an offence). It is fitting to reproduce here comments made by us in our Second Report. In Part V, Chapter 4, we said:

As we reported in Part III, Chapter 8, physical surveillance for both security and regular police investigations is very likely to involve a number of legal violations. At the conclusion of that chapter we took the position that, even though the legal violations resulting from physical surveillance operations may often be regarded as "minor infractions" or "technical breaches" of "merely regulatory laws", the continuation of physical surveillance without any changes in the law endangers the rule of law, for it implies that our security agency or police forces may in their institutional practices pick and choose the laws which they will obey. We argued that to permit a national police force or security intelligence agency to adopt a policy which entails systematic violations of "minor" laws puts these organizations at the top of a slippery slope. . .

In Part V, Chapter 1, we said:

Nor is the rule of law a principle that should be compromised for the sake of national security. Government agencies, including a security service, should not pick and choose which laws they will obey. We do not accept the idea that there are some 'minor', 'regulatory', laws which security agencies should be free to ignore when they stand in the way of security investigations. There may well be a need to change the laws so that exemptions are provided for members of a security agency or police force, but it is not for security agencies, or police forces, or even for the Ministers responsible for these agencies, to decide which laws apply to them and which do not.

PART IV

SPECIFIC CASES NOT REQUIRING RECOMMENDATIONS FOR FURTHER ACTION

INTRODUCTION

1. One aspect of our inquiry which has occupied a great deal of our time and attention is the extent to which the R.C.M.P. reported specific examples or general patterns of activities "not authorized or provided for by law" to responsible officials and Ministers.
2. In Part I of our Second Report we described briefly how the disclosure of Operation Bricole by former Constable Robert Samson, at his trial in 1976 on a charge arising out of an unrelated incident, had set in chain a series of events which culminated in the creation of our Commission of Inquiry. Operation Bricole took place in October 1972, yet it did not become public knowledge until March 1976. Other unlawful activities did not come to the attention of the government until over a year after that date, and even then some of them were not disclosed directly by the R.C.M.P. but by disaffected ex-members and by the news media.
3. We have examined, in Part II of this Third Report, the degree of general knowledge of Ministers and senior government officials about the R.C.M.P.'s involvement in illegal activities. In Part III we looked at the extent to which senior R.C.M.P. members, senior government officials and Ministers, knew of certain practices of the R.C.M.P. which were "not authorized or provided for by law". In Parts IV, V and VI we now examine certain specific incidents of possible wrongdoing.
4. In Part IV we review a number of incidents with respect to which, for a variety of reasons, we make no recommendations that they be further considered with a view to prosecution or disciplinary action. In some cases, such as some of the allegations examined in Chapter 10, prosecutions have already taken place. In one instance, described in Chapter 9, the destruction of an article, the matter has already been referred to, and reviewed by, the appropriate provincial attorney general. In still others, although we have found no illegal conduct, we have criticized the actions of the R.C.M.P. members involved. In these latter cases we have not recommended references for examination for possible disciplinary proceedings, either because those members are no longer active members of the R.C.M.P. and therefore, in our opinion, no longer subject to disciplinary proceedings, or because the conduct, while deserving of our comment, does not, in our opinion, warrant discipline. Finally, in several cases, a thorough review did not disclose any conduct requiring censure.

CHAPTER 1

MR. HIGGITT'S MEMORANDUM RE SURVEILLANCE ON CAMPUSES

Summary of facts

1. In Part III, Chapter 11, of our Second Report we described the policies and practices relating to R.C.M.P. activities with respect to university campuses. We noted that in 1961, the Minister of Justice, the Honourable E.D. Fulton, then the Minister responsible for the R.C.M.P., directed the Force to suspend investigations of subversive activities in universities and colleges. We pointed out that in 1961 the only activities deemed "subversive" by the R.C.M.P. were those of Communist organizations, and that as a consequence the directive to the field by R.C.M.P. Headquarters was "... that all investigations connected with Communist penetration of universities and colleges..." were "... to be suspended...". The directive to the field also provided that "long established and reliable agents and contacts in a position to provide information pertaining to Communist activities . . . may continue to report upon developments".

2. In November 1963, Prime Minister Pearson issued a public statement that there was "... no general R.C.M.P. surveillance of university campuses" but that for public service screening purposes or where there were "definite indications that individuals may be involved in espionage or subversive activities" the R.C.M.P. did go to the universities for information. The R.C.M.P. had given "absolute assurance . . . that there was not at [that] time any general security surveillance of university campuses by the R.C.M.P. nor of any university organizations as such".

3. By directive dated November 29, 1967, Assistant Commissioner Higgitt, who was at that time Director of Security and Intelligence, issued instructions, which we quoted at length in our Second Report. Our conclusions in our Second Report with respect to that directive were that

... there is no question that the actions outlined and commented on in the directive represent a comprehensive, long range programme of source development on campus. The security screening process was being used as a means of making contact with faculty heads and assistants, even though they were not mentioned as referees on personal history forms, and persons who were obviously well disposed were re-interviewed and cultivated in the hope that a continuing relationship would be established. The method employed was subtle and indirect but its object was clear: the development of a number of faculty sources who would contribute to the counter-subversion programme.

Conclusion

4. In our view the issuance of that directive by Mr. Higgitt was improper. He was fully aware of the stated government policy and, rather than seeking to have the government change the policy to meet the current needs of the Force, as he perceived them, he distorted the existing policy to suit those needs.

CHAPTER 2

R.C.M.P. DEALINGS WITH
ROYAL COMMISSION ON SECURITY

Introduction

1. On December 16, 1966, a Royal Commission was appointed
... to make a full and confidential inquiry into the operation of Canadian security methods and procedures and, having regard to the necessity of maintaining
 - (a) the security of Canada as a nation; and
 - (b) the rights and responsibilities of individual persons,to advise what security methods and procedures are most effective and how they can best be implemented, ...

Those Commissioners were directed "that the proceedings of the inquiry be held *in camera*".

2. The R.C.M.P. Director of Security and Intelligence, Asst. Commissioner W.H. Kelly, was in charge of the R.C.M.P. participation in the work of the Royal Commission on Security. Mr. Kelly, who had joined the R.C.M.P. in 1933, retired as a Deputy Commissioner in April 1970. From 1964 to 1967 he was the Director of Security and Intelligence, and in 1967 became Deputy Commissioner for Operations which included both intelligence and crime. During the course of the Commission's work, Mr. Kelly dealt with it on almost a daily basis, and he attended all of the R.C.M.P. meetings with the Commission, with the exception of one or two.

3. All of the testimony which we heard on this subject was from Mr. Kelly. It was received in public on July 23 and 24, 1980, and is found in Volumes 195 and 196 of our transcripts. In addition, Mr. Kelly filed a written representation with us.

Summary of facts

4. The Royal Commission on Security did not hold formal hearings at which evidence was taken under oath and recorded verbatim. Rather, their meetings were of an informal nature at which the Secretary of the Commission kept notes. Mr. Kelly told us that the R.C.M.P. acted as the researchers for the Commission except for what he said was the research work done by the Secretary and the very little research work that was contracted by the Commission. He said that some briefs were presented to the Commission from outside interests. Our examination of the records of that Royal Commission

disclosed that the Commission had a Director of Research and conducted its own research programme. No doubt extensive briefs were prepared by the R.C.M.P. for that Commission, as they were for us. However, those briefs served for them, as for us, as only one of the sources for the research programme.

5. Mr. Kelly testified that, when he was in Montreal in January 1967, he chanced to meet Mr. E.A. Spearing, a member of the Canadian Association of Chiefs of Police (C.A.C.P.), who told him that a special committee had been set up to discuss the preparation of a brief by C.A.C.P. to the Royal Commission. He said that Mr. Spearing asked him whether or not he, Kelly, could help them in any way and that he explained to Mr. Spearing it was useless for the C.A.C.P. to put in a brief dealing with crime because that was not within the mandate of the Royal Commission. He said that Mr. Spearing then asked him whether he, Kelly, could let them have something that might help them in deciding what kind of brief to put in and he agreed to provide something. Mr. Spearing was a member of the executive of the C.A.C.P. and also a member of the Special Committee.

6. It appears that Mr. D.N. Cassidy, the Secretary Treasurer of the C.A.C.P., had spoken to the Commissioner of the R.C.M.P. about the same matter sometime before the meeting between Mr. Kelly and Mr. Spearing.

7. On February 1, 1967, Mr. Spearing wrote to Mr. Kelly. He stated:

This is also a reminder concerning our conversation about the security matter. You will recall you thought you would prepare a short memo for me which would assist in our thinking. If you have not already done so, would you please do this as I am sure whatever you say would be most helpful.

8. Mr. Kelly prepared a memorandum and forwarded it to Mr. Spearing under cover of a letter dated February 14, 1967. He also sent a copy of the memorandum to Mr. Cassidy.

9. Mr. Kelly told us that he was giving the C.A.C.P. what he thought were the facts of the situation upon which they could draw if they were so inclined. He said he knew that the memorandum would reach the Special Committee of the C.A.C.P., which was made up of about 10 chiefs of police, "with minds of their own". He said he was preparing something to focus C.A.C.P.'s attention on the security issue because they were insistent on dealing with questions other than those that the Royal Commission wanted to hear.

10. In his memorandum Mr. Kelly pointed out that the Royal Commission had "not been set up to discuss security in the context of criminal activity". He said that "should the C.A.C.P. wish to comment on the security aspects of espionage, subversion and sabotage, it could be done, it is suggested, on the following basis...". The comments he suggested included the following:

... it is felt that the R.C.M.P. is an ideal organization to handle the problems [subversion] on a national basis and can look for the greatest possible support in those regions represented by members of th C.A.C.P.

...

The present arrangement works very satisfactorily and the forces represented by the C.A.C.P. ... would like to see the present ... arrangements continued, and which they feel are very much in the interests of the country, and having complete confidence in the abilities of the R.C.M.P. to undertake this work.

...
In the field of espionage a great deal of cooperation takes place between the R.C.M.P. and all of the major police forces in Canada. This cooperation is given most willingly in an effort on the part of police forces to assist in countering espionage, which it is considered is a danger to law, order and good government in the country. This again is an area where it is not possible to have it handled satisfactorily by other than a national organization. The C.A.C.P. would like to make it clear that it has every confidence in the R.C.M.P. in this field and that it is the type of organization ... in which it can place its complete confidence.

Because of the very nature of counter-espionage investigation, much of it relates to normal police investigation and the co-operation given by the forces represented by C.A.C.P. is given on the understanding that the information involved will be handled with complete police understanding and the protection of sources without which co-operation would not be possible. Also, without the confidence in which the R.C.M.P. is now held, it would not be possible for co-operation of a high quality to exist.

The C.A.C.P. are fully aware of some of the criticism aimed at the Security and Intelligence Directorate of the R.C.M.P. and, while they feel there may be some basis for some of the criticism, they also feel that in the main the critics are ill-informed, have no appreciation of the difficulties involved, and usually are criticizing for a purpose which does not lend itself to objectivity.

The police forces represented by C.A.C.P., working as they do with the Royal Canadian Mounted Police in all spheres of activity throughout the length and breadth of Canada, would like it to be known that in the fields referred to in paragraph one [espionage, subversion and sabotage] it has the utmost confidence in the R.C.M.P. and, in the interests of the security of the country, the R.C.M.P. should retain its present responsibilities.

11. Mr. Kelly said he was drawing all these matters to the attention of the C.A.C.P. so that they could prepare a brief in that direction if they wished to do so.

12. Mr. Kelly said that his memorandum was for the use of Mr. Spearing and not for the use of the Special Committee, but he confirmed that he sent a copy to Mr. Cassidy who he knew would be involved in the actual writing and who would automatically be a member of the Special Committee.

13. The C.A.C.P. submitted a brief to the Royal Commission. In that brief the C.A.C.P. stated, *inter alia*:

This will record the complete confidence of the Canadian Association of Chiefs of Police in the Royal Canadian Mounted Police in the handling of its responsibilities relating to the security of the country. We regard full freedom of action as essential to this important national responsibility. It is clear also that the co-operation of all other law enforcement agencies with the Royal Canadian Mounted Police is essential to maximum efficiency. All members of this association are prepared to continue their all-out support and co-operation.

The brief makes the point in its second paragraph that "... while members of the Royal Canadian Mounted Police belong to this association, none were appointed to the Special Committee or present at the meeting".

14. Mr. Kelly said he had no connection with the Committee or anyone concerned with the brief and that he was not consulted about it nor was he informed of its contents. He told us that in preparing the memorandum he was perhaps a little more helpful than was intended. He said that what he did was on his own initiative and that it did not occur to him that going as far as he did could compromise the objectivity of the information which was transmitted to the Royal Commission. He told us that he was so concerned about getting every bit of information possible to the Commission that he saw nothing wrong with what he was doing at the time. He said that he can now see how an honest attempt to assist could be interpreted in some other way and that with an analysis of the memorandum it could have been interpreted in a way that he did not think of at the time.

15. By letter dated May 8, 1967, the Secretary of the Commission advised Mr. Kelly that the Commissioners and Commission staff would be visiting certain foreign countries, and he listed them. He said that in the cities in those countries that they would be visiting they hoped "to be briefed by the domestic security authorities, and to have discussions with the local Canadian security officer", and that in certain of them they would like "to discuss the security aspects of Canadian immigration operations with the local Canadian officials, including the visa control officers". The Secretary concluded the letter by saying: "We should be very grateful if you would inform your local offices of these plans, and invite them to co-operate with us".

16. Mr. Kelly had some correspondence with the officer in charge of the visa control section in Cologne. In a letter of June 15, 1967, to that officer, Mr. Kelly told him that he "should feel free to discuss fully with [the Secretary of the Commission] the Visa Control operations". In a letter dated August 3, 1967, to that same officer, in discussing a working paper which the officer proposed to submit to the Commission, Mr. Kelly said, "Insofar as the working paper on Visa Control matters, we must see this paper before it is passed to the Commission so that we can comment thereon and add anything that we think the paper requires". He added, "We will be pleased to get your draft paper as soon as possible and we will return it in plenty of time for submission to the Royal Commission". Immediately following this latter sentence there are two paragraphs which read as follows:

As a matter of interest, I should say that in my appearances before the Royal Commission they have been somewhat concerned about the rigidity of criteria and no doubt will ask you whether or not there is room for flexibility in the criteria. We have taken the stand that to leave room for flexibility would disturb the criteria and such a suggestion indicates that it would be quite in order to have a different interpretation on criteria by every Visa Control Officer. Hence the best and safest way is to keep the criteria somewhat inflexible. I feel sure that this question will arise in any discussion group.

Also, the problem of handing security information to Immigration Officers will arise, as one suggestion was that Immigration Officers should be given the information and a decision could then be arrived at by the Immigration Officer and the Visa Control Officer putting their heads together. It was pointed out that the conditions laid down by our sources prevented us from doing this and that the Immigration Officers were neither clear [sic] for security, nor did they seem to be concerned with security in any way. This is an indication of the kind of question you are likely to get and an indication of the kind of answers that we have been giving at this end.

Mr. Kelly testified that the purpose of having Headquarters look over the document would be to see that what was being said was correct and that it had all the facts in it and that the purpose was not to take anything out of the document. He said he has no recollection of having told the Royal Commission about the process that was followed, but that he would have had no objection to telling them had the question come up.

17. By letter dated September 1, 1967, the officer in charge of Visa Control in Hong Kong wrote to the Director of Security and Intelligence at Headquarters advising that the Royal Commission personnel would be coming to Hong Kong and he asked for "such comments and/or instructions as you may care to give in the matter". In response, by letter dated September 14, 1967, Mr. Kelly advised that officer that he could participate in any discussions with the Royal Commission and could arrange meetings with his own contacts if this was desired and possible. He said also in that letter: "anything that our friends can convey to the Royal Commission, indicating that Communism is still a dangerous ideology, will be of value". Mr. Kelly told us that in writing that he was giving an indication that he wanted the point stressed.

18. Prior to the Royal Commission's visit to Washington, Mr. Kelly went there himself. He told us he did so to ask the F.B.I. to tell the Royal Commission everything they wanted to know and not to hide anything from them. He said he did that because he thought that if the Commissioners saw that the F.B.I. had similar problems to those of the R.C.M.P. the Commissioners would be able to relate the difficulties that the R.C.M.P. had in the same areas. He said that when he went to see the F.B.I. he thinks he must have told the F.B.I. what the views of the R.C.M.P. were on the question of separation of the Security Service from the R.C.M.P., and that he must have told them "that the view of non-separation was being put forth in a very cohesive manner by the Force". He said that for years the F.B.I. had been telling him what a wonderful organization they had in the R.C.M.P. and how they, the F.B.I., wished that they were established as a law enforcement agency in the same manner as the R.C.M.P. He said he felt confident that the F.B.I. would give the same views to the MacKenzie Commission.

Conclusions

19. We are concerned not so much by each of the individual items recited above but with what they demonstrate collectively. They show a willingness on the part of Mr. Kelly to attempt to exercise a degree of influence over the nature of the information which was flowing to the Royal Commission on

Security. The purpose appears to have been in each case to attempt to have the R.C.M.P., and its role in security at the time, shown in the best possible light. We are satisfied that what was done did not go to the lengths of manipulating information being given to the Commission; rather, it appears to have been an attempt to influence the nature of the information being given. In these cases that we have examined there certainly was no attempt to withhold information. Rather, the attempt appears to have been to influence people, whom the Commission no doubt would consider were presenting quite independent views, to stress those points which the R.C.M.P. felt were favourable to itself. Whether his actions were or were not successful is beside the point.

20. In his written representations to us Mr. Kelly suggested that, had we called as witnesses the various persons that he had contact with in the incidents which we have described in this chapter, we would have found that there was no effort on his part "... to influence them to restrict their information..." to the Royal Commission. These representations demonstrate that Mr. Kelly continues to have a frame of mind which does not accept that it is not appropriate for an institution which is under examination to attempt to influence others whose views are being sought, as to what views they should express to the investigating body, particularly without that fact being made known to the investigating body. We have no evidence on the question of whether those who Mr. Kelly dealt with were actually influenced in their conclusions by what he said to them, nor did we seek any such evidence. We do not need such evidence. What we had under review was Mr. Kelly's willingness to participate in an attempt to influence those people, without the knowledge of the Royal Commission, while he, at the same time, was responsible for R.C.M.P. dealings with that Commission.

21. We do not consider that Mr. Kelly's approach to the proceedings of the Royal Commission was proper, and consequently find his conduct in this regard unacceptable.

CHAPTER 3

CERTAIN ASPECTS OF THE CRISIS OF OCTOBER 1970 AND ITS AFTERMATH

1. This chapter is not a report on the October crisis of 1970. It is not a report on the background of the crisis, on the kidnappings that occurred, on the investigation and detection of the offenders, or on the reasons for the federal government adopting regulations under the War Measures Act. This chapter is, rather, limited to certain specific issues which, for reasons we shall explain, we considered to be not only within our terms of reference but deserving of investigation and report. Any comprehensive study of the involvement of the R.C.M.P. in the October crisis and its aftermath would be an enormously complex and time-consuming task. We did not consider that undertaking that task was essential to enable us to carry out either part of our terms of reference. In any event, to do it effectively would have required broader terms of reference, so that we would have had an unlimited right of inquiry into the R.C.M.P. as a whole. Indeed, the task could probably be carried out effectively only by a commission of inquiry created by both the government of Canada and that of the province of Quebec, because of the jurisdictional limitations that are met otherwise.

2. Our inquiry in this area began in 1979 with our focus on whether, during the October crisis of 1970 and its aftermath years of 1971 and 1972, members of the R.C.M.P. or its human sources in Quebec committed illegal acts other than those which had already by then come to our attention. The immediate impetus for focussing on this issue came from the revelations in public testimony before the Commission of Inquiry into Police Operations on Quebec Territory (the Keable Commission) which in the fall of 1979, heard testimony in particular from Madame Carole Devault, who had been a source of the Montreal Police during the time in question. Her testimony caused us to ask whether members of the R.C.M.P., or human sources of the R.C.M.P., had been active in ways similar to those described by her.

3. Inquiry in this area required extensive examination of documents in R.C.M.P. files and interviews with members of the R.C.M.P., by our legal counsel, whose work was most delicate and sensitive, because of the importance rightly attached by the R.C.M.P. to the protection of the identity of human sources. We did not hold formal hearings concerning the matters reported on in this chapter, but our legal counsel examined some 200 files and interviewed 18 members and ex-members of the R.C.M.P. There are, however, several thousand files relating to the events in Quebec in 1970 and 1971, and it is possible that, if all those files were examined, further facts might come to light which

would be relevant to our mandate. On the other hand, some practical limits had to be set to our inquiry, and we are satisfied that the work done enables us to answer certain questions in a reasonably satisfactory manner.

4. As a result of this research we have identified four specific issues that appear to us to be worthy of comment. The first three issues are such that, if certain conclusions were arrived at, it might be said that members of the R.C.M.P. or its sources had engaged in activities "not authorized or provided for by law", either in the sense that offences were committed or, in the case of members, that their conduct was "unacceptable". The fourth issue is one that does not relate to activities "not authorized or provided for by law" but, rather, to the other arm of our terms of reference, which we may briefly refer to as the policies, procedures and laws "governing the activities of the R.C.M.P. in the discharge of its responsibility to protect the security of Canada".

5. The specific issues that we report on, and the reasons they came to our attention, are as follows:

- (a) Did the R.C.M.P. have a human source within the Chénier cell or the Libération cell of the Front de Libération du Québec (F.L.Q.) during the October crisis of 1970? This issue arose in the course of our research into whether members of the R.C.M.P. committed acts "not authorized or provided for by law" during the October crisis, or instructed or permitted R.C.M.P. human sources to commit such acts during the October crisis or its aftermath.
- (b) Did the R.C.M.P. know of Operation Poupette and of the role played by Madame Carole Devault, a human source of the Montreal Police? If so, did the R.C.M.P. communicate its knowledge to the Solicitor General when the Government of Canada was assessing the weight to be attached to reports of events in 1971-72, in many of which she participated as a planner? This issue arose during the fall of 1979 as a result of the public hearings of the Keable Commission, at which Madame Devault testified that, during the October crisis of 1970 and the years 1971 and 1972, she had been a source or informant of the Montreal Police, under the code-name "Poupette".
- (c) Did the R.C.M.P. in any sense create or contribute to the climate which gave rise to concern in the Government of Canada that in the fall of 1971 there would be occurrences on a scale similar to that of October 1970? Was the government informed accurately as to the facts that gave rise to that concern? These issues arose as a result of examination of R.C.M.P. documents and our realization that there might be a possibility of such R.C.M.P. involvement through the use of sources or the non-reporting of relevant information.
- (d) To what extent, before and during the crisis of October 1970, were there difficulties in regard to liaison and co-operation among the police forces in the province of Quebec? This issue was disclosed by certain information and opinions given to our counsel while he was interviewing members of the R.C.M.P. as to other matters, and it became apparent in due course that we could shed some light on this limited question, which has a bearing on para. (c) of our terms of reference.

We now turn to an examination of these four issues.

- (a) Did the R.C.M.P. have a human source within the Libération cell or the Chénier cell of the F.L.Q. during the October Crisis of 1970?

6. The Libération cell of the F.L.Q. was responsible for the kidnapping of the British trade commissioner, James R. Cross, in Montreal on October 5, 1970. The Chénier cell kidnapped the Province of Quebec's Minister of Labour and acting Premier, the Honourable Pierre Laporte, on October 10, 1970, and members of that cell have been convicted of having murdered him on October 17. In this section we consider whether there is any validity to the suspicion that has on occasion been expressed in the media that the R.C.M.P. had a human source within one or both of these cells.

7. Our counsel reviewed a number of files of the R.C.M.P. relating to the participation of its members in the October events, and other files relating to persons who were involved in the F.L.Q. or who, before the October crisis, were recorded as having been friends or acquaintances of individuals who formed the Libération or Chénier cells during the crisis. He advised us that, although the R.C.M.P. had human sources who worked directly or indirectly in the F.L.Q. milieu, none of them was implicated directly or indirectly in the Libération or Chénier cells. As part of the research into this matter, we sent the R.C.M.P. a list of the names of 258 persons who, according to a working brief prepared by the R.C.M.P. in the summer of 1971 and a brief entitled "Current F.L.Q. Groups" dated November 24, 1971, were involved closely or not so closely in the events of October 1970. We asked whether any of those persons had, during those events, been a human source of the R.C.M.P. The R.C.M.P. then provided several files to us relating to persons who had been human sources during that period. We were able to satisfy ourselves that, so far as could be determined from those files, no human source of the R.C.M.P. had been implicated in either one of the cells. Particular attention was paid to one person who had been an important human source of the R.C.M.P. during the period. That person's file was reviewed as well as other files which referred to that person. The result of this review was a conclusion that that person, while involved in the F.L.Q. milieu, had not worked directly or indirectly in the Libération or Chénier cells.

8. It is, moreover, relevant to the question under discussion to observe that the R.C.M.P. could scarcely have had a source in these cells if it had no information about the cells. The R.C.M.P.'s evaluation of the Libération cell during and after the October crisis was that it was very well organized, and that its existence and membership had been unknown to the R.C.M.P. before the kidnapping of Mr. Cross. The Chénier cell was, unlike the Libération cell, organized spontaneously — after the Cross kidnapping — and was regarded as having been comparatively poorly organized. Although members of that cell, such as Paul Rose and Jacques Rose, were well-known to the R.C.M.P. before the crisis, there was no indication that they were planning to organize a cell or to kidnap anyone, and the evidence indicates that they did not in fact lay any such plans and that their actions were inspired by the news of the Cross kidnapping. This is the essence of an analysis found in an R.C.M.P. draft

memorandum dated September 13, 1975, prepared in Ottawa and Montreal, which said:

The police forces including the R.C.M.P. had no precise knowledge of the existence of the Chénier and Liberation cells on or before October 5, 1970. By contrast the police forces knew several individuals but were not capable of identifying them precisely as belonging to one cell rather than to another.

The Liberation cell was formed at the beginning of September 1970. The plan to kidnap a diplomat was conceived with a care and professionalism which subsequently surprised the police forces. The members of the cell had been chosen with care, their hiding places were well thought out, their methods of communication worked well, there were few people who knew the details of the kidnapping, and the principal actors were thus able to live in clandestinity without difficulty during the fall of 1970. The Chénier cell was formed only during the first week of October 1970, and its formation had all the appearances of improvisation. The hiding place was known to certain members of the milieu. The hostage was chosen at the last minute. The communications between its members were carried out in a nervous manner, often without planning. The editing and issuing of communiqués during the events of October 1970 was done in a hasty fashion and gave the impression that there had been no planning or specific strategy.

Thus, individuals who turned out to be involved directly in the events of October 1970 may have been known to the R.C.M.P. before October as members of the F.L.Q. — an amorphous body — but not as members of a specific cell. Moreover, certain of the leading F.L.Q. members were previously unknown to the R.C.M.P., particularly Jacques and Louise Cossette-Trudel. Even when a person in the milieu was known to the R.C.M.P., it did not follow that his participation in the events of October was known or even suspected at the time. Thus, for example, R.C.M.P. files indicate that Nigel Hamer was known to the R.C.M.P. from 1969, but not as a member of the F.L.Q. Rather, he was known as being part of the movements of the extreme left in general. The R.C.M.P. had learned, for example, that he had been invited, by the Cuban Consulate in Montreal, to spend a certain period of time in Cuba during the summer of 1970. However, the files of the R.C.M.P. indicate that it was only in March 1971, as a result of information received from the Montreal Police in that month, that Nigel Hamer was suspected by the R.C.M.P. of having been involved with the Libération cell in October 1970. It is true that in December 1970 he had been the subject of surveillance by the R.C.M.P., at the request of the Montreal Police, who told the R.C.M.P. that he was suspected of having hidden several cases of dynamite and of being the initiator of the formation of another F.L.Q. cell. It appears that as early as October 6, 1970, the Montreal Police had learned from a source that there was a possibility that Nigel Hamer had participated in the kidnapping of Mr. Cross. In addition, the Montreal Police learned from their source Carole Devault early in November 1970, that an "anglais" who was a graduate of McGill University had participated in the kidnapping of Mr. Cross, and on December 8, 1970, she told the Montreal Police that Hamer had participated in the kidnapping of Mr. Cross.

9. Two suspicions as to possible involvement of members of the R.C.M.P. in the October crisis kidnappings were investigated by our counsel. One arose from a member of the Criminal Investigation Branch of the R.C.M.P. having been seen on a few occasions before October 5, 1970, in the vicinity of Redpath Avenue in Montreal — that being the location of Mr. Cross' house, from which he was kidnapped. Our legal counsel interviewed the member, who is still in the R.C.M.P. He explained that, at the time, he had just been transferred to Montreal from Chicoutimi and that he was trying to find work for his girl friend who planned to join him in Montreal. He stated that the kind of work which he was trying to obtain for his friend was that of a housekeeper, and that he was meeting people who had advertised for the services of a housekeeper. There does not appear to be any reason to doubt his explanation or to suspect him of having been involved in the Cross kidnapping.

10. The second matter investigated arose from the fact that the name of a member of the R.C.M.P. and his Montreal office telephone number were found in the personal notebooks of Louise Verreault, when her apartment on St.-Denis Street was searched on November 17. She had not previously been known to the R.C.M.P., but quickly became of interest when it was realized that she had paid the rent on an apartment on St.-André Street in Montreal for August 1970 in the name of the Cossette-Trudels and on their behalf. As a result of the ensuing inquiries it was learned that she had played a vital support role for the members of the Libération and Chénier cells, both financially and by providing a hiding place for Paul Rose for a time. The R.C.M.P. member whose name was in her books was interviewed by our counsel, who ascertained that he had, for several years before September 1970, been in the counter-espionage branch in Montreal, and from September 1970 to May 1972 was not stationed in Montreal but at Headquarters in Ottawa. The member explained that since boyhood he had been a friend of Louise Verreault's brother, Pierre, and that he had met Louise Verreault on several occasions. His guess as to how his name and telephone number came to be recorded by Louise Verreault was that he had given her his business card, for he was in the habit of giving everyone his card. He stated that he had never "gone out" with Louise Verreault and did not know that she lived on St.-Denis Street. He gave the same explanations to his superior in Ottawa in November 1970, when he was asked the same sort of questions, and the next day, as he was asked to do, he took Louise Verreault out to dinner, ascertained from her that she knew the Cossette-Trudels, and obtained her agreement to meet Staff Sergeant Donald McCleery. She did so, and was questioned on November 18. We are satisfied that the R.C.M.P. member was not connected in any way with the kidnapping of Mr. Cross.

11. The answer to question (a) is that we have been unable to find any evidence that the R.C.M.P. had a human source within either the Libération cell or the Chénier cell.

(b) Did the R.C.M.P. know of Operation Poupette and of the role played by Carole Devault, a human source of the Montreal Police? If so, did the R.C.M.P. communicate its knowledge to the Solicitor General when the Government of Canada was assessing the weight to be attached to reports of events in 1971-72, in many of which she participated as a planner?

12. In late 1970, 1971 and 1972, the Montreal City Police had a human source within some cells of the Front de Libération du Québec (F.L.Q.). She was Madame Carole Devault, and her code-name was "Poupette". As the activities of the Montreal City Police are beyond our terms of reference, we shall report on her activities only so far as is necessary to enable us to report on certain matters involving the R.C.M.P. She did not testify before us, and she was not interviewed by our counsel. Many details of her activities may be found in the Report of the Keable Commission.

13. In addition to utilizing the code-name "Poupette", the Montreal Police ran an operation called "Operation Poupette". While it is not easy to define the precise limits of this "operation", a principal function was not just to obtain information about the activities of members of the F.L.Q. through "Poupette" but to use her to cause communiqués to be issued in the name of the F.L.Q. While knowledge undoubtedly existed in the R.C.M.P. in due course as to the existence of a Montreal Police source named Poupette, that is very different from suggesting that there was the same level of knowledge that Poupette was being used to produce communiqués.

14. On November 6, 1970, Madame Devault told the Montreal Police that a theft was planned at the Cal Oil Company and that the Viger information cell was preparing to issue a communiqué. Thus, as of that date, the Montreal Police were in contact with a cell which in turn was in contact with the Chénier cell and even, apparently, with the Libération cell. Evidence of such contact is found in the fact that one communiqué issued by the Viger cell in November 1970 referred to the failure of the Montreal City Police to discover Paul and Jacques Rose and Francis Simard of the Chénier cell when they had raided an apartment on Queen Mary Road in Montreal, and that the second communiqué issued by the Viger cell that month was accompanied by a photograph of Mr. Cross, evidently taken by his captors in the Libération cell.

15. It was only on or about November 18, 1970 that the other police forces, the R.C.M.P. and the Quebec Police Force, learned that the Montreal Police had an informer in an F.L.Q. cell. The information was given to them during a tripartite meeting during the course of which a representative of the Montreal Police informed representatives of the other two police forces of the contents of an apparently complete record of two meetings which representatives of the Montreal Police had had with Carole Devault. The R.C.M.P. in Montreal then informed the R.C.M.P. in Ottawa of this new development, but there is no indication that this information was given to such senior officers as the Commissioner or the Director General of the Security Service, or passed on to the Solicitor General or the Prime Minister. The Montreal Police subsequently kept the other two police forces informed of information they received from

Madame Devault. However, this does not necessarily mean that members of the R.C.M.P. were made aware of all aspects of or developments in Operation Poupette. About the third week of February 1971 a bomb was placed near the Délorimier post office in Montreal. Madame Devault had already provided information to the Montreal Police about the plan to place this bomb, and that information had been passed on to the other two police forces. Indeed, before the bomb was placed, members of the three forces had met with the object of dividing up among them the surveillance tasks required to ensure that the event and the individuals were adequately covered. There is no indication, however, that those members of the R.C.M.P. who knew of these matters saw to it that their senior management was aware that the Montreal Police had an informer in the cell and were knowledgeable as to the extent of the ability of the cell to threaten law and order.

16. According to the Keable Commission's Report, Madame Devault prepared, or was in some way involved in the production or distribution of, thirteen communiqués on behalf of F.L.Q. cells between November 14, 1970 and November 19, 1971. In addition she was able to furnish information about the production of 7 communiqués, of which either two or three were those in which an R.C.M.P. source, had a hand. Members of the R.C.M.P. in Montreal who were aware of her status as a source of the Montreal Police were also aware of her participation in the preparation and issuing of F.L.Q. communiqués. The R.C.M.P. members learned this through their liaison man who worked at the office of the anti-terrorist section of the Montreal Police. Two members of the R.C.M.P. confirmed this fact to our counsel; they had conducted liaison for a period in the autumn of 1970 as well as in 1971. One of these members informed our counsel that his own consciousness of the use of the source "Poupette" by her controller, Lieutenant Detective Giguère of the Montreal Police, in regard to communiqués, arose during the course of the autumn of 1971. This member states that it was only in November 1971 that he met Inspector Cobb in Montreal to discuss with him the suspicions which the member had developed in this regard. (Mr. Cobb had been away studying in Quebec City for a year until May 1971, and returned in the summer of 1971 to assume command of "G" section in Montreal.) The R.C.M.P. in Montreal decided in December 1971 — so far as our counsel has been able to ascertain — to review all aspects of "Operation Poupette", to check the accuracy of the information that was being received from her, and to check whether her controller was using her in order to spread poor information or even false information. This decision resulted in a formal operation with its own code name. The information obtained by our counsel through examination of files and interviews with members is consistent with testimony by Mr. Cobb, who spoke from memory as follows when questioned on this subject on March 12, 1981:

I almost certainly knew, at that time, that an informant of another police force could have been the author of communiqués issued in the name of one or another cell. . . I think I should have been — I think I was.

(Vol. C121A, p. 15833.)

I think that the difficulty that I may have had with that question is that, I was aware that the Montreal Police had had a source; I believe that I was

aware that she was involved in the drafting of communiqués; and I knew that at a certain point I became suspicious of the motives and of the reliability of that source and took a number of initiatives in an attempt to verify my suspicions.

(Vol. C121A, p. 15839.)

However, merely because Mr. Cobb knew by some time during the winter of 1971-72 that Pouquette was the author of some of the communiqués, it does not necessarily follow that he addressed his mind to whether her involvement meant that they were "false" and thus potentially unnecessarily alarmist communiqués. He told us:

If I was aware of it at that time, it was not an awareness that caused me to think of it as scandalous in any way not that I can recall now.

(Vol. C121A, p. 15842.)

He considered the communiqués issued by Pouquette to be "genuine", not "false":

...I would have had reason to believe that some if not all of the communiqués were genuine in the sense that they claimed responsibility for criminal acts that had actually occurred.

(Vol. C121A, p. 15834.)

They become false only if the controlling agency deliberately introduces into their contents things that are not wished by the leader of the cell.

(Vol. C121A, p. 15840.)

In other words, a communiqué is not "false", as Mr. Cobb would have it, even if it is written by an informant of a police force, if it contained no element injected by the police force and merely stated what the cell wanted it to say. It is because he did not consider her communiqués to be false that he had been able to testify to us in public on July 18, 1978, that he did

... not know of any false communiqué being produced by another police force.

(Vol. 65, p. 10682.)

17. There is another matter to which we wish to refer, even though our counsel's investigation proved inconclusive. It is a hypothesis that during the search of the apartment on the Rue Des Récollets where Mr. Cross had been kept by his kidnappers, after they left the premises on December 3, 1970 to go to the airport under police escort, the Montreal Police found several blank sheets of communiqué paper, and that subsequently these were passed on to the source "Pouquette" who in turn distributed them to certain individuals in the F.L.Q. milieu such as Robert Comeau and Michel Frankland. This theory was advanced in a study dated January 25, 1978, by a member of the R.C.M.P. who was one of the R.C.M.P. liaison men with the Montreal Police during the period. However, it has never been confirmed. We note that the copy of the Montreal Police reports of the search, as found in an R.C.M.P. file, are incomplete, in that some pages are missing. According to the Keable Commission Report, the same reports are incomplete in the files of the Montreal Police.

18. Did anyone at Headquarters in Ottawa communicate this information to the Solicitor General or any Minister or public servant outside the R.C.M.P.?

The answer to this question is found in the results of our counsel's interviews of Mr. Starnes, who was Director General at the time, and Mr. Goyer, who was Solicitor General. Each of them advised our counsel that he was in no way aware either of the name "Pouquette" or of "Operation Pouquette" in 1971. It is true that in 1971, as a result of a request received by the Deputy Solicitor General of Canada from the Attorney General of Quebec, the federal government agreed, through the medium of the R.C.M.P., to contribute to compensation paid by the Montreal Police to three human sources who had been active during the 1970 crisis. There is a written analysis by the R.C.M.P. of the work of these sources, in which their names were given, including that of Carole Devault. However, the analysis made no reference to "Pouquette" or "Operation Pouquette", and we have no evidence that would show that those in the government who considered and authorized a contribution to the payment made knew anything about the code-name "Pouquette" or the name or meaning of "Operation Pouquette".

19. The answer to question (b) is that, so far as we can tell, while during late 1970 and 1971 there were members of the R.C.M.P. who knew that the Montreal City Police had a source in the F.L.Q. milieu, and that the source was Carole Devault, it was only in November and December 1971 that some of the members began to suspect that her role was more than that of a source of information — i.e. that there was more to "Operation Pouquette" than obtaining information. There is no evidence that any of this knowledge was ever communicated to the Solicitor General, apart from knowledge that Carole Devault had been a source of information during the October crisis of 1970.

(c) Did the R.C.M.P. in any sense create or contribute to the climate which gave rise to concern in the government of Canada that in the fall of 1971 there would be occurrences on a scale similar to that of October 1970? Was the government informed accurately as to the facts that gave rise to that concern?

20. We have already referred to the knowledge which the R.C.M.P. had, from November 18, 1970, of the presence of a source called Pouquette who reported to the Montreal Police and was in the F.L.Q. milieu.

21. We have mentioned a number of communiqués in which she was involved in one way or another. It is relevant here to state that our counsel's research has disclosed that an R.C.M.P. human source, during the year 1971 wrote at least three communiqués in the name of two different cells of the F.L.Q.

22. The first, dated October 17, 1971, was issued in the name of the F.L.Q. "Frères-Chasseurs" cell. It read as follows (Ex. MC-197) [translation from French]:

Front de Libération du Québec
Communiqué Number 1
October 17, 1971
"Frères Chasseurs" Cell

Dear Robert, I hope you will understand when I tell you that the Front de Libération du Québec has not given up the struggle. Young Quebecers are not running the risk of rotting in your prisons, after having been tortured by

your police, for the fun of it. You see, my dear Robert, we have no illusions: there will undoubtedly be many more rigged trials and unwarranted imprisonments before the first real trial of our history — your own! I assure you that we cannot remain indifferent when the good woman next door hangs out her rags between two sheds. On Thursday she was crying because her husband had lost his job (one of your 100,000 layoffs). But he didn't have a .410 shotgun. When the Simards in Sorel have a cold, you can't sleep. But as for us, we spend sleepless nights thinking about the fact that Quebec is dying a bit each day because of you. We often think of you and we will soon come to visit you to discuss all this. In the meantime, pleasant dreams. Long live the Front de Libération du Québec Long live Quebecers. We shall triumph.

23. The second, dated also October 17, 1971, was issued in the name of the F.L.Q. "Pierre-Louis Bourret" cell. It read as follows (Ex Mc-197) [translation from French]:

Front de Libération du Québec
Communiqué No 1
October 1971
"Pierre-Louis Bourret" Cell

The "October Crisis" was created out of nothing by the refusal of the authorities to free those Quebecers whose only wrongdoing had been to attempt to replace them. October 71: the authorities create another crisis. Ottawa and the false Quebecers, in the pockets of foreign interests, raise once again the spectre of "misguided revolutionaries who kill for the sake of killing". It was as if the authorities almost hoped that the FLQ would spring into action in order to distract the people of Quebec from their disastrous situation. As if FLQ action would serve to excuse the basic indifference of the leaders. Yet the people do not fear the FLQ, because the people have nothing to reproach themselves with. It is the guilty who are afraid of receiving a "visit". Take a look at how many Pinkerton's and Phillips guards are at the homes of Drapeau, Choquette, Bourassa, Neapole, Steinberg and their acolytes. Yet there are no armed guards watching over rue Maricourt or rue Sainte-Elisabeth. The state knows and protects the guilty! The FLQ also knows. It will not be long before the army returns. Mark well, Pierre-Louis Bourret killed no one, yet he died . . . the victim, like so many of our compatriots, of brainwashing — a citizen struck him down. Coroner Lapointe did not reveal his name for fear of vengeance. However, we wouldn't even think of getting back at a man who was a victim of conditioning. We know the name of Pierre-Louis's killer. He has nothing to fear from the Front de Libération du Québec, but a great deal more to fear from his conscience. We shall triumph!

24. The third communiqué, which was issued on October 23, 1971, in the name of the "Pierre-Louis Bourret" cell, read as follows (Ex. MC-196) [translation from French]:

Front de Libération du Québec
Communique Number (illegible)
October 23, 1971
Pierre-Louis Bourret Cell

To commemorate the sad anniversary of the death of democracy in Quebec, those in power found nothing better to do than to initiate, in the "Parthenais barracks", another political and legal farce.

Attempts are no longer made to save face by giving a semblance of justice to the grotesque charades that political trials have turned into. The most obvious denial of justice occurred at the beginning of the week when Paul Rose was illegally ushered out of the room when the most important part of his trial — the selection of the jury — was getting under way.

The crown — at \$300 a day — seized the opportunity to assemble twelve valets of its choice, who are much more the peers of Trudeau, Bourassa and company than of Paul Rose.

The Front de Libération du Québec wishes to inform the magistrates, who have long been corrupted by a régime of usurpers, that they have adopted a suicidal attitude. Several judges have already signed their own death warrants in this way.

The Front de Libération du Québec has all the time it needs and couldn't care less about being called "big talkers" by the fascist press.

This press is the instrument of authorities in the grip of panic. By serving as their instrument it is putting the rope around its own neck.

We shall triumph!

25. Members of the R.C.M.P. Security Service advised our counsel that the Security Service in Montreal was not capable of controlling the source adequately, and that the Security Service in Montreal did not learn of the existence of the communiqués written by the source until after they had been issued. This was the position taken when interviewed by our counsel, by a member of the R.C.M.P. who had been the source's handler. He stated that he had never asked the source to issue communiqués and that it was only after the communiqués had been issued that he learned that the source had printed the blank communiqué pages and issued communiqués in the name of the two cells. However, there is some room for doubt about this, and for concern that the handler or other members of the R.C.M.P. knew in advance of the source's plans to issue the communiqués. In a telex message from the handler to "G" Branch at Headquarters dated November 15, 1971, he reported meetings he had held on October 15 and 23 with a source of "unknown reliability", who, according to the message, gave details as to how the communiqués had been issued, ascribing their authorship to other persons who, the source was reported to have said, had formed the "Frères-Chasseurs" and "Bourret" cells. The November 15 message concluded by stating that it was a condensing of two messages which had been sent on October 20 and November 5, 1971. Those two messages, according to a note on the Headquarters file, were destroyed at Headquarters, and our counsel has been advised by the R.C.M.P. Task Force that has acted as liaison with us, that the messages cannot be located in the Montreal files. These circumstances invite an inference that the source's R.C.M.P. handler, who was the author of the messages to Headquarters, was aware of the direct participation of the source in the issuing of the three communiqués. The message of November 15 described step by step what was done by the persons mentioned and referred to the source by one of his ordinary names as a participant. Yet it is obvious that the source must have been present as these steps were taken, and our counsel is satisfied, on the basis of his interviews, that of the three persons who were involved in the issuing of the communiqués, it was the source who was the leader and instigator.

26. In any event, at least from some time in October 1971, some members of the R.C.M.P. in Montreal knew that their own human source had issued these communiqués, and yet the R.C.M.P. appears not to have informed the other police forces and not to have informed senior management of the R.C.M.P. at Ottawa as to the true source of these communiqués. Bearing in mind that Operation Pouquette was responsible for approximately thirteen communiqués, the responsibility of the source for at least three other communiqués produces a total of at least sixteen communiqués which were issued with the direct or indirect participation of persons who were sources of police forces.

27. Whatever the intention of the police forces may have been, it is possible to observe that the failure to advise senior management of the R.C.M.P. of the true facts left it open to senior management to believe, and to communicate to government, that the F.L.Q. threat in 1971 was on a level of intensity somewhat higher than it actually was. It is not possible for us to give a conclusive assessment of the effect which the non-reporting of the true origins of those communiqués had upon senior management or government, for no such assessment can be undertaken without knowing all the facts which were placed before senior management or government, whether by the R.C.M.P. or otherwise, concerning the situation in Quebec.

28. In October 1971 there were two telex messages from the R.C.M.P. in Montreal to Headquarters in Ottawa. Each referred expressly to one of the communiqués which had been in fact issued by the source; according to a note made by Mr. Starnes, these telex messages were shown to the Solicitor General, the Honourable Jean-Pierre Goyer, and Prime Minister Trudeau. In addition, a letter was sent by Mr. Starnes on October 28, 1971, which referred to two of those communiqués. However, there is nothing in these documents or in the conversations which our counsel had with Mr. Starnes and Mr. Goyer, which would lead one to believe that either the Solicitor General or the Prime Minister was informed of the fact that these communiqués had been issued by an R.C.M.P. source. Mr. Starnes told our counsel that he had not, prior to his conversation with our counsel, known of the existence of the R.C.M.P. informer in question.

29. In weighing the evidence as to whether the Government of Canada was led to attach too much importance to some of the communiqués that were being issued in the fall of 1971, it may be noted that on October 28, 1971, a telex message was sent from the R.C.M.P. in Montreal to Headquarters in Ottawa. This message indicated that several communiqués were the work of groups infiltrated by the police. The sets of initials marked on the message by persons at Headquarters, although difficult to read, do not appear to include the initials of Mr. Starnes.

30. When calculating the possible effect on senior management and government, of the communiqués which were issued either by those involved in Operation Pouquette or by the R.C.M.P. source, it is also important to remember the following facts: In December 1971, as a result of the actions of Superintendent Cobb, a communiqué was issued falsely in the name of the Minerve cell, and was publicized in the media, and senior management was not

advised of the true origins of that communiqué. (We report on this matter in Part VI, Chapter 6.) By letter dated December 29, 1971, the content of the Communiqué was sent by Mr. Starnes to the Solicitor General, Mr. Goyer, without any reference to its true origin.

31. The answer to question (c) is that we have found no evidence that the R.C.M.P. in any sense created or contributed to the climate that existed in Quebec in the fall of 1971, except to the extent that a human source of the R.C.M.P. participated in issuing three F.L.Q. communiqués in October 1971 and the R.C.M.P. issued the Minerve Communiqué No. 3 in December 1971. These facts were not communicated to the government.

(d) To what extent, before and during the crisis of October 1970, were there difficulties in regard to liaison and co-operation among the police forces in the province of Quebec?

32. In 1970 the R.C.M.P. and the other police forces were aware that subversive movements in other countries used the technique of kidnapping in order to bring pressure on governments. The police forces were also aware that there was a great deal of activity in the F.L.Q. milieu during the year 1970. There were many bombings, attempted bombings and thefts of dynamite, rifles and ammunition, and there were unexecuted plots to kidnap the Israeli and United States consuls in Montreal. These events, preceding the fall of 1970, had given rise to attempts by the three police forces to co-ordinate their efforts in the event of a serious emergency. (It is to be borne in mind that our report on these efforts, as on other matters in this chapter, is necessarily based only on our access to R.C.M.P. files and interviews with members of the R.C.M.P. We did not have similar access to the records of the other forces.) An R.C.M.P. document, apparently prepared in Montreal, dated July 23, 1975, recorded as follows:

It should be noted that following the attempted kidnapping of American Consulate Harrison Burgess in June 1970 it seemed police forces met in order to formulate a plan that would seal the city in the event that another kidnapping did occur. This plan also involved other security measures and correspondence on this subject was forwarded to headquarters. However, no final decision was ever received to implement this plan.

Another joint operational plan which was developed was eventually used in October 1970. The 1975 analysis described it as follows:

We followed the contingency plan already prepared:

1. Alert all detachments.
2. Border patrols.
3. Conduct records check of various individuals considered capable of such actions.
4. Institute surveillance of questionable subjects.
5. M.C.P. had to interview neighbours and persons liable to know information.
6. M.C.P. and R.C.M.P. had to check for fingerprints at the residence.
7. Investigations of *all* information received. [emphasis in original document].

8. M.C.P. had to draw profiles of individuals seen in the area.
9. M.C.P. and R.C.M.P. as soon as communiqués arrived had to check for fingerprints and typewriter prints, check phraseology and compare.
10. Show pictures of possible suspects to individuals concerned.

One feature of the joint operational plan, at least in the manner in which it appears to have been applied by the three police forces during the crisis, may have hampered rather than accelerated an early resolution of the events. We refer to item 7, which required investigation of *all* information received. A reading of the R.C.M.P. log book in Montreal for the period reveals how much "information received" consisted of quarrels between neighbours, questions arising out of relationships between fellow-workers, and the like. Interviews with R.C.M.P. members suggest that little discretion was exercised as to which of such items was to be investigated. While we admit to having the benefit of hindsight, we question whether it was wise to apply an arbitrary rule that all information be investigated, rather than to exercise discretion as to what to investigate. In addition to this joint plan, the three police forces established a working group which was called the Combined Anti-Terrorist Squad (CATS). This had been formed in 1964 with the aim of forming a co-ordinated system to combat terrorism in Quebec. In 1970, only the Montreal Police and the R.C.M.P. in Montreal belonged to the group, but in September 1970 the Quebec Police Force joined it. The objectives of this group were as follows: (1) to exchange information, (2) to co-ordinate investigations of the terrorist milieu, (3) to evaluate information obtained, (4) to determine priorities, (5) to divide up tasks among the different police forces. In 1970 this group had no powers of supervision or decision, for the three police forces continued to operate in an autonomous fashion. CATS was considered by the police forces as a secondary instrument of assistance and support if such support was necessary. In any case, after the second kidnapping this working group ceased to function effectively.

33. An R.C.M.P. document prepared in the fall of 1970 records that as of June 1970 a conservative estimate indicated that there were ten known or suspected F.L.Q. hard core action cells operating in the Province of Quebec, and that known Quebec terrorists were in training in the Middle East.

34. As we have already indicated, the R.C.M.P. Security Service was aware of the activities generally of a number of the individuals who became active in October 1970, but the R.C.M.P. were unaware of the potential for violent action of certain persons who in fact were involved in the two kidnappings. Obviously the R.C.M.P. was unaware of the plans of the Chénier cell, and could not predict the reaction of the Rose brothers or the last minute plans hatched by them and their confederates. However, that would not support a conclusion that the R.C.M.P. was ill-prepared or unprepared for the events which occurred. The lack of knowledge cannot be equated with failure. On the other hand, we should note that R.C.M.P. members interviewed by our counsel consider that the three police forces lacked the human sources from whom information might be gathered, and the analytical expertise to enable them to develop insight into the existing F.L.Q. cells.

35. During the October Crisis itself, R.C.M.P. documents indicate that the division of jurisdiction which is inherent in our federal system, and complicated by the division of police jurisdiction within a province between a provincial police force and municipal forces, was considered by the R.C.M.P. to be a source of considerable difficulty. It is important to realize that under our system the provincial and municipal forces have the responsibility for initiating investigations of crime, and that the R.C.M.P. could fundamentally assume only a supplementary role. This secondary position in law notwithstanding, in fact, the R.C.M.P. had a particular interest in the investigation of that crime and was as heavily involved as the other two forces in the investigation of both kidnappings. The degree of R.C.M.P. involvement is attributable to the facts that the first subject of kidnapping was a foreign diplomat, and the federal government has a certain international and legal responsibility for protecting the safety of diplomats. Members of the R.C.M.P., in discussion with our counsel, described the difficulties encountered in liaison with the other police forces at the time. According to these members of the R.C.M.P., inquiries being conducted by the different levels of police force were not co-ordinated, the tasks were not divided amongst them, and there was great confusion. According to them, attempts to establish a co-ordinating body foundered on the desire of each force to protect its own autonomy.

36. An example of the sense at the time that there was a lack of co-operation and mutual confidence among the different police forces is found in the following memorandum dated November 16, 1970:

It is relevant to note that investigation in the case of Mr. Laporte's murder is in the hands of the Q.P.F. Homicide Squad and not even the Intelligence Squad on the same force can obtain information of interest to themselves, to City Police and to us. . . There is a definite lack of cooperation and trust between units within the Sûreté itself and there is a gradual growing of suspicion and mistrust between the Sûreté and the City Police. . .

37. The R.C.M.P. lacked confidence in at least one of the other police forces, namely the Quebec Police Force, which it suspected, perhaps not of being infiltrated by one or more F.L.Q. informers, but at least of having in its midst a member or members sympathetic to the F.L.Q. An R.C.M.P. memorandum dated November 10, 1970, by Corporal J.P.R.A. Noël, which was forwarded by Superintendent Forest (the officer in charge of the Security and Intelligence Branch in Montreal) to Ottawa, recorded some very disturbing news:

Re: Kidnapping of Senior British Trade Commissioner James Richard Cross
— Montreal, Quebec, 5 October 1970.

1. On November 4, 1970 I was at the office of the Quebec Police Force in Montreal discussing with ["F"], . . . , a member of the security squad of the Quebec Police Force whom I previously knew only by sight. The latter member was about [...] years old. When the discussion turned to Paul Rose, the member of the Security Squad mentioned that members of the Quebec Police Force had made a technical installation in the residence of Paul Rose ("tapped his line"). . . he continued by saying that 18 minutes after the end of the operation [i.e. the installation]...., Paul Rose received a call from someone who said to him: "Watch out

your line is bugged." The QPF member added that [the call had been traced and it had been determined] that the person who called Rose did so from the Headquarters building of the Quebec Police Force, Parthenais Street in Montreal. He added that if the person who called Rose had kept the line open several seconds longer, it would have been possible to determine in a precise way the exact location within the building from which the call to Paul Rose had come.

2. ["F"] did not seem to have heard about this incident and the Security Squad member expressed his surprise that ["F"] was not aware of this incident. He added that "everybody was talking about it". This gave me the impression that he was implying that most members of the Security Squad of the Quebec Police Force were aware of this incident.
3. I wish to add that this conversation is the only one which has been brought to my attention about the incident in question, that is no other person has spoken to me about it.

Our counsel interviewed Mr. Noël, who confirmed the accuracy of the memorandum. Our counsel has no way of verifying the accuracy of what was recorded in this memorandum, since our counsel did not speak to any representative of the Quebec Police Force. We are aware that this information, if accurate, is extremely disturbing. For, if the installation and warning occurred before the death of Mr. Laporte, the implications of the events are obvious. There is no evidence, in the special file created in 1970 to house this information, that the memorandum or its contents were transmitted to the Government of Canada until a copy of the document, with many other documents on other topics, was forwarded to the Solicitor General's office in 1979.

38. Whether true or not, the conversation reported in the above memorandum could not help but inspire in the R.C.M.P. a lack of confidence in the efforts of the Quebec Police Force. The attitude of the R.C.M.P. was reflected further by a memorandum dated November 16, 1970, which read as follows:

After six full weeks today of working with the Sûreté and the Montreal City Police on the Cross-Laporte kidnapping it is necessary to report that while we have at all times extended full cooperation, we find it increasingly more difficult to keep abreast of developments as they happen. We have daily maintained competent NCOs at the Sûreté headquarters where they have played a leading role in the interrogations of persons arrested and in the examination of evidence documents. One of our NCOs has acted as a liaison officer with us there, another has worked each and every day with lawyers there on study of the evidence for final decisions on liberations or on accusations. The center manned by members of the three forces who formed the anti-terrorist squad sometime ago, we have had a liaison officer on a 24-hour basis and from two to four analysts every day. Yet unless we keep constantly calling and requesting, we are not in the picture until hours later and then often only verbally.

A further memorandum bearing the same date read as follows:

Our man has been on standby at the office on a 24-hour basis to assist in this operation and the manner of learning of developments as they occur

should not be as frustrating as it is. We shall try to improve the communication between our forces but because of mistrust, the desire to retain the best intelligence for one's self and the fact that each force sees no need but to report to its staff officers, we do not hold much hope for improvement on what we have been doing this far.

The distrust reached such a level that, when the investigative efforts of members of the R.C.M.P. Security Service led them to discovery of the probable place of confinement of Mr. Cross, they did not inform the other police forces. It was on November 26, 1970 that Commissioner Higgitt informed the Solicitor General and the Prime Minister that the R.C.M.P. had very probably discovered the place where Mr. Cross was being held and where members of the Chénier cell were to be found. However, it was on November 30, 1970, several hours before the freeing of Mr. Cross, that the R.C.M.P. gave any information to the other police forces. Reporting on this matter on December 10, 1970, Commissioner Higgitt wrote the Solicitor General as follows:

It will be clear from this account that very little would have been needed to undo many hours, indeed weeks of careful investigation. An unguarded remark to persons who could not be entirely trusted, unskilled surveillance or an unconscious inquiry in the wrong quarter and the kidnappers could have moved and escaped. Throughout the course of this very difficult case, one of our greatest concerns was that there might be a premature leakage of information vital to the investigation through the multiplicity of centres established to deal with various aspects of the crisis and which had independent and often overlapping lines of communication. Thus I believe our ability to limit the vital details of the investigation to as few persons as possible contributed importantly to its successful outcome and there are no doubt useful lessons to be learned from this fact.

Similarly, as a result of interception of a telephone call by the R.C.M.P., the R.C.M.P. suspected that members of the Chénier cell were connected with a farm located in St-Luc, Quebec. Members of the R.C.M.P. established themselves at a point over four miles from the farm in order to attempt to conduct interception of telephone calls to and from the farm. However, they did not learn of the presence of the Rose brothers and Francis Simard at the farm. After the freeing of Mr. Cross, they ceased surveillance of the farm on December 4 because during all the time that the telephone to the farm was tapped, there had been only two calls, neither of which was considered to have any bearing on members of the cell. The point of this incident that is relevant to our present discussion is that the R.C.M.P. did not pass on any information to the other police forces as to their suspicions that the Rose brothers might be hidden at Michel Viger's farm. It was only as a result of information, subsequently received by the police forces, that the Rose brothers and Francis Simard were hidden at the farm, that searches of the farm were carried out by three police forces on December 22 and 25, 1970, without success, and that on December 27 and 28 the Quebec Police Force searched it again, successfully, due to information given to them by Michel Viger under questioning. Commissioner Higgitt referred to the events of December 28 as follows in the letter to the Solicitor General dated January 8, 1971:

It should perhaps be added that the RCMP learned of the arrest of Simard and the Rose brothers from the Sûreté du Québec after the event, about 7 a.m. on the morning of the 28th of December. Subsequently we learned that when it had been suggested in a telephone call from the farm house to Mr. St-Pierre, Director General of the Sûreté du Québec, made early on the morning of the 28th December, that the Montreal City Police and the RCMP might be invited to participate, he reacted negatively. Given the key role which the RCMP played in the discovery of the location, the obvious desirability of continuing to emphasize the joint nature of the various police actions which had been mounted against the FLQ and other revolutionary activities in Quebec in recent years, it is a pity that all three forces could not have participated in the final phase of the dénouement. A rather discouraging note upon which to end 1970, and hopefully not a harbinger of the way in which cooperation between the three police forces in Quebec is to be conducted in the new year and beyond.

In view of the concerns raised by Corporal Noël's memorandum of November 10, it is not surprising that the R.C.M.P. exercised extreme caution about sharing vital information with other police forces. In the circumstances this may have been the only wise course open to the R.C.M.P.

39. The lack of effective co-ordination among the three police forces during the October Crisis should give cause for concern in the Government of Canada for the future, if there should be another emergency of the same order in any region of Canada or in all of Canada, particularly wherever police forces other than the R.C.M.P. exercise local jurisdiction. Given the federal nature of Canada, we can offer no panacea. Co-operation may be encouraged, and attempts can be made in advance of any crisis to create regular mechanisms that may enhance the possibility of effective co-operation. The police forces themselves are jealous of their own autonomy, and are — perhaps quite properly — hesitant to take initiatives without the support of their governments, for such initiatives may have broader ramifications in terms of federal-provincial relations. Therefore the impetus for creating an atmosphere in which co-operation may grow, even if it may be expecting it ever to flourish may be an exercise in optimism, must come from the governmental level. We recommend that the Government of Canada study the means by which, wherever police forces other than the R.C.M.P. exercise jurisdiction, co-operation may be achieved effectively in the investigation of crime and the enforcement of the law, whenever situations develop that justify the concern and involvement of the Government of Canada and the R.C.M.P. as well as of provincial law enforcement authorities.

CHAPTER 4

BACKGROUND TO CERTAIN SECURITY SERVICE ACTIVITIES IN QUEBEC FOLLOWING THE OCTOBER CRISIS, AND AN ANALYSIS OF THREE ATTEMPTS TO RECRUIT HUMAN SOURCES

A. BACKGROUND

1. In this chapter and in Chapters 5 to 10 of Part VI we examine a series of events which raise questions of possible illegality and impropriety on the part of members of the R.C.M.P. Security Service in the province of Quebec during a period of a little more than two years following the October crisis of 1970. The events we shall examine in these seven chapters are as follows:

1971

- October 4 — Attempted recruitment of André Laforest as a source. (Case No. 1 in Part VI, Chapter 5.)
- October 20 — Attempted recruitment of Jean Castonguay as a source. (Case No. 2 in the present chapter.)
- November 10 — Attempted recruitment of Maurice Richer as a source. (Case No. 3 in the present chapter.)
- December 19 — Issuing of a false communiqué in the name of the Minerve Cell of the F.L.Q. ("Communiqué Minerve III"). (Reported on in Part VI, Chapter 6.)

1972

- January 17 — Attempted recruitment of Reynald Michaud as a source. (Case No. 4 in Part VI, Chapter 5.)
- February 1 — Successful recruitment of a human source. (Case No. 5 in the present chapter.)
- Sometime early in 1972 — Attempted recruitment of Michel Lemay as a source. (Case No. 6 in Part VI, Chapter 5.)
- April — Taking of dynamite from Richelieu Explosives Inc. (Reported on in Part VI, Chapter 8.)
- May 8-9 — Burning of a barn at Ste-Anne-de-la-Rochelle. (Reported on in Part VI, Chapter 7.)

- June — Attempted recruitment of André Chamard as a source. (Case No. 7 in Part VI, Chapter 5.)
- October 6-7 — Operation Bricole: surreptitious entry into premises of the A.P.L.Q. and other organizations and removal and destruction of documents. (Reported on in Part VI, Chapter 9.)
- 1973
- January 8-9 — Operation Ham: entry into the premises of a computer firm in order to remove, copy and return tapes bearing information concerning the Parti Québécois. (Reported on in Part VI, Chapter 10.)

2. These events, of course, represent only a small part of the activities of the R.C.M.P. Security Service in Quebec relating to various aspects of the separatist movement. There were many operations of which we are aware, in which there was no illegal or improper conduct, such as other instances of attempts to recruit human sources. It would be erroneous and unfair to paint the actions of those engaged in these investigations with a broad brush of criminality or wrongfulness.

3. The period was marked by the establishment at Headquarters in 1970 of "G" Branch, whose functions were given existence separate from their previous home — the Countersubversion Branch. It was also characterized by a failure on the part of Headquarters management personnel to provide proper controls and guidance to "G" Branch so as to ensure that field operations would be within the scope and intended limitations of the authority granted to "G" Branch, and within the law. The officer heading "G" Section in Montreal had then, and maintains today, a theory of police management that would see operational decisions in delicate matters taken by the officer in charge in the field rather than by senior management personnel at Headquarters. His rationale was that in the event of exposure and outcry the field officer can take the blame and the damage done to the police force as an institution will be less than if the blame were attached to a member of the senior management. This theory was not shared by the Director General of the Security Service, Mr. Starnes. Nevertheless, when Operation Bricole was suddenly presented to the officer for approval, as an operation to be carried out that very night, and he was unable to contact Mr. Starnes, he, himself granted the approval. When Mr. Starnes learned of the operation several days later, he sent a telex message to the head of the Security Service in Montreal, saying that he was "considerably irritated" to learn of the operation after the fact. But no record of the admonition was placed on the officer's personnel file, as would have been the case if it had been truly regarded as a form of discipline.

4. We find it difficult to comment on the organization of "G" Section in Montreal and whether the atmosphere or the system was conducive to the carrying out of illegal or wrongful acts. The Officer in Charge, Inspector Cobb, attempted to encourage an exchange of ideas among the members of the Section, and among its several units. He had daily meetings to discuss developments. He had all the members situated in a single large open office

with the object of encouraging communication. Yet the inherent reserve of police officers and of persons engaged in security intelligence work, particularly those engaged in the handling of human and technical sources and attempts to recruit human sources, undoubtedly prevented any disclosure of details of such work at meetings or even in small groups. The need-to-know principle was bound to defeat full disclosure and discussion. We say this without criticism of the members, especially in regard to human sources, for we fully recognize the importance within an organization such as the Security Service, of protecting the identity of sources and even of sources under development or being considered for recruitment.

5. Thus we prefer not to pass judgment on whether there was some defect in the management techniques used in "G" Section that led to the events upon which we report. We have less hesitation in making three observations of a different character.

6. First, when Staff Sergeant McCleery was the senior non-commissioned officer in G-2 (a unit charged with the responsibility for investigating terrorist groups), he was highly impatient with what he regarded as an ineffective approach by Mr. Cobb. Mr. McCleery thought that what was needed was action. He saw Mr. Cobb as a talker but not as a man of action. He may well have been wrong about this, but that was his perception and in his attitude lay the seeds of certain of the events.

7. Second, the voluminous evidence we have of these events, particularly those involving Mr. McCleery, illustrates vividly how little independent judgment is exercised by subordinates within a strongly disciplined police force when they not only respect the orders of a superior but actually fear the wrath of the superior if his orders, requests or decisions are even questioned. We are satisfied that at least some of the men who were junior to Staff Sergeant McCleery fell into this category in their relationship with him. Because of these constraints they were prepared blindly and unhesitatingly to accept his orders or requests, without protesting to him or even questioning him and certainly without going over his head to raise the matter with a superior officer. Sergeant Brodeur, who in 1972 was a Corporal serving under Staff Sergeant McCleery in "G-2", told us that he remembered both Mr. McCleery and Mr. Cobb saying, "If you can't stand the heat get out of the kitchen" (Vol. 76, p. 12298). Sergeant Brodeur testified that hesitation about carrying out the instructions of an immediate superior would result in being classified as "negative", thereby affecting his chances of career advancement. Consequently, the effect of this atmosphere on Mr. Brodeur, he says, was that he always obeyed orders and never questioned Mr. McCleery, taking into account that "I had a wife and two children to look after".

8. Third, in considering those events that occurred after March 1972 it is important to remember that in March 1972 a meeting of senior officers of the Security Service was held near Ottawa. A record of the matters discussed at that meeting was distributed that same month by Mr. Starnes to senior officers of the Security Service across Canada. The record stated as follows:

THE NEED FOR DISRUPTION TECHNIQUES

The Director General indicated that he wanted Security Service Branches involved to be far more vigorous in their approach to disruptive activity and that well-conceived operations of this nature would have his complete support. These points evolved from the discussion.

- (1) Disruption could be seen in terms of effective cost control. Where it was clearly seen that the purposes of an organization or an individual were at cross-purposes with the maintenance of domestic stability, they should be neutralized.
- (4) The problem of reticence of Divisional C.O.'s when confronted with disruptive operations should not be allowed to influence our work in this area. Security Service officers in the Field were committed to ensuring the completion of tasks set for them by HQ. Those who failed to comply would be subject to censure, including, if necessary, transfer.
(Ex. M-33, Tab 7.)

9. We turn now to an examination of a thesis that has been presented to us with considerable emphasis by counsel for most of the members who were involved in those incidents. It is that, in analyzing and characterizing the conduct of members of the R.C.M.P. during the year following the 1970 crisis (October to December 1970), regard must be had to the apprehension that existed within the R.C.M.P. that in October 1971 there would be, as a recognition of the first anniversary of the October crisis, a renewed outbreak of terrorist violence. More generally, throughout 1971 there was a serious concern within the R.C.M.P. that there might be a recrudescence of politically motivated kidnappings, bombings and robberies of the kind that were known during the October crisis and the seven and one-half years that preceded it.

10. A concise summary of the politically motivated violence in Quebec of the years preceding the October crisis of 1970 is as follows:

- March 7 to May 20, 1963: ten bombings or attempted bombings, resulting not only in property damage but also in one death and one maiming.
- July 1963 to October 1964: more bombings, bank robberies and attempted arson.
- 1965 to 1968: more robberies, bombings and attempted bombings, resulting not only in property damage but also, in one instance, in the death of one person and injuries to others, and, in another instance, in the death of a man killed by the premature explosion of a bomb he was taking to be placed at a factory.
- 1969: more bombings and attempted bombings, as well as serious violence related to labour-management disputes and hostility concerning language matters. There were 97 demonstrations in Montreal between October 1 and November 12.

While this recitation has not referred so far to prosecutions arising from these events, we pause to note that early in 1969 Pierre-Paul Geoffroy pleaded guilty to 129 criminal charges arising out of acts committed between May 1968 and March 1969. These included a total of 93 charges of planting explosives, conspiracy to manufacture bombs and manufacturing bombs, arising from 31

bombing incidents. In speaking to sentence, his counsel admitted that 20 of these were to protest against delay in settling strikes, five were to protest against the economic-social climate in Quebec and four were in support of the independence of Quebec. The presiding judge in the Sessions Court, Judge André Fortin, in passing sentence, said that in the case before him what was involved were "offences the carrying out of which plunged Montreal society into a climate of collective panic" [our translation]. We now continue with the last stage of our brief chronology:

— 1970: during the first nine months there were more bombings, robberies and thefts of dynamite. In February an attempt to kidnap the Israeli Consul in Montreal was thwarted, and in June a plan to kidnap the American Consul was thwarted. On October 5 the Libération cell of the F.L.Q. kidnapped the Senior British Trade Commissioner in Montreal, Mr. James R. Cross, and on October 10 members of the Chénier cell of the F.L.Q. kidnapped the Quebec Minister of Labour, the Honourable Pierre Laporte, who was murdered on October 17. These two kidnappings caused the federal Cabinet to proclaim regulations under the War Measures Act effective at 4:00 a.m. on October 16. (We need not refer here to the steps that were taken by the police forces under those regulations. Those aspects of the War Measures Act that we have considered to be within our terms of reference were discussed in Part IX, Chapter 1 of our Second Report.)

11. We now wish to set forth some background to the contention that members of the R.C.M.P. feared that there would be a renewed outbreak of terrorist violence late in 1971. In his testimony before us, Mr. Robin Bourne, who was head of the Security Planning Analysis and Research Group (SPARG) in the federal Solicitor General's Department from mid-1971 onward, said:

We were not only worried about separatists in Government, we were worried about the extent to which the FLQ could re-emerge and whether there was going to be another crisis; and the whole business of the *front commun* and getting together and there was a viable social force.

(Vol. 141, p. 21711.)

The Honourable Jean-Pierre Goyer, who was Solicitor General from late December 1970 to November 27, 1972, testified and produced a written report (Ex. MC-70) dated October 29, 1971, which was prepared by SPARG, obviously based on information provided by the R.C.M.P. It recited some events of September and early October 1971, what fears existed in regard to what might happen in mid-October, that the events feared substantially failed to materialize, and why that may have been so. Mr. Goyer told us that on September 24 there had been a briefing of Ministers at a meeting of the Cabinet Committee on Security and Intelligence, and a further briefing of other Ministers and of the Leader of the Opposition (the Honourable R.L. Stanfield) on October 1. Mr. Goyer testified that in late September and early October trouble was foreseen not only in Quebec but in cities outside that province. As far as Quebec was concerned, the "apotheosis" was expected to occur, he said, on October 16, when a mass demonstration was planned and it was estimated that 30,000 people would participate. (In fact, only about 5,000

people did participate that day, and a mass rally which, according to information received, had been scheduled for the previous evening at the Paul Sauvé Arena in the east end of Montreal, was cancelled.) Mr. Goyer also mentioned, as grounds for his having been "reasonably certain" that there was a risk of serious occurrences, an anticipated strike of the "police forces" in Quebec (see also Vol. 122, p. 19057), anticipated strikes by students and unions, and the robbery at Mascouche on September 24 (Vol. C50, pp. 6825-30; Vol. 123, pp. 19321-2). As a result of these fears, he stated, preventive actions were increased, such as alerting the mass media so that they would not exaggerate events, and letting persons in the terrorist milieu know that they were being watched (Vol. 123, pp. 19314 et seq.; Vol. C50, pp. 6801-28).

12. We shall now set out a chronology of selected events in Quebec in 1971, as we have been able to ascertain them from R.C.M.P. files. Many of them are publicly known. As we list them, we shall often give information that will enable the reader to judge whether the event was one which was a cause for apprehension in late 1971 to the degree that would have been the case if the R.C.M.P. and other forces had not been reasonably successful in penetrating some F.L.Q. cells or in investigating and arresting offenders. Some of these events were included in a list of events in 1971 that was presented to us by Chief Superintendent Donald Cobb when he testified on July 20, 1978 (Ex. D-37). It was presented in support of a claim he had made to us when he first testified, in December 1977, that in late 1971 there had been an apprehension of new violence.

1971

- January 3 — A communiqué of l'Armée de Libération du Québec (section métropolitaine) was issued in Montreal. It described l'Armée de Libération as the military wing of the F.L.Q. Attached to it was a photograph of armed men training in Jordan.
- During the night a theft of dynamite occurred at St-Paul d'Abbotsford. According to a Montreal newspaper, *Le Devoir*, 127 sticks of dynamite and 377 detonators were stolen. Testifying before the Keable Commission in 1979, Madame Carole Devault (whose code name was "Poupette") said that, as an informer of the Montreal Police, she had told her handler, Lieutenant Detective Giguère, of the possibility of this theft. R.C.M.P. files indicate that after the event the identity of the persons involved was known.
- January 6 — A Molotov cocktail was thrown against a Brinks truck in Montreal. The Quebec Provincial Police pursued those responsible but lost them. The participants were known to all police forces from January 6, as a result of information provided by Madame Devault to the Montreal Police. On January 7 three daily newspapers received a communiqué from the André Ouimet cell claiming responsibility for the attack.
- January 8 — *Le Devoir* received a communiqué from the Viger cell. It deplored the status of Quebecers.
- February 12 — A Montreal newspaper, *Le Journal de Montréal*, received a communiqué from the Délorimier recruitment cell. It attacked

the capitalist system and referred to a forthcoming bulletin that would describe how to make bombs. The news item appeared February 14. Another police force advised the R.C.M.P. of the identity of the person who issued it. According to the Keable Commission Report, Madame Devault testified that she advised the Montreal Police of the identity of the person who issued it. R.C.M.P. records indicate that the R.C.M.P. was informed.

- February 20 — A bomb was placed in the early morning at the Délorimier post office by four individuals, one of whom was a source of another police force. Poupette was one of those who planned this incident, and, as she had warned the police force to which she reported, members of all three police forces participated in the police operations preceding and during the incident. Representatives of the R.C.M.P. and other forces had held two meetings at which this information was received and the three forces divided among themselves the duties of surveillance of individuals and other duties. A Quebec City newspaper, *Québec Presse*, published a communiqué from the Wilfred Nelson cell claiming responsibility for the act. On February 21 there was extensive reporting and photographic coverage in two Montreal newspapers, *Montréal-Matin* and *Le Journal de Montréal*.
- February 25 — Two juveniles tried illegally to obtain \$500 from a Montreal businessman and issued a communiqué under the name "Rodier cell". The communiqué specified how the money was to be paid. They were arrested the same day by another force.
- March 6 — *Le Journal de Montréal* received a communiqué from the organization cell called Joseph Duquet. It urged Quebecers to take up arms. It was published on March 7. Another police force advised the R.C.M.P. within several days that the participants were known. According to her testimony before the Keable Commission, Madame Devault was involved in issuing this communiqué and reported on it to the Montreal Police after its publication.
- March 14 — A communiqué from the Denis Benjamin Viger cell was found in a trash can at the exit of the Victoria Métro station. It criticized the Montreal municipal government and threatened the planting of bombs.
- March 25 — A communiqué from the François Nicholas cell was received by *Québec Presse*. It claimed responsibility for a theft from Air Canada at Dorval Airport, Montreal, on March 11.
- March 29 — Mario Rachand, who had been well-known to the police forces as a very active member of the F.L.Q. in the late 1960s, was murdered in Paris.
- March 31 — Four Molotov cocktails were thrown against a Canadian National Railways shed at Ste-Rosalie. A communiqué claimed that this act was the work of the Armée de Libération du Québec under the sponsorship of the Narcisse Cardinal cell.

- April — During the first two weeks of April, two communiqués were issued, one by the Front de libération des professeurs, the other by the Front de libération des étudiants du Québec. They explained the groups' positions in opposition to the administration of the CEGEPs (junior colleges).
- April 8 — *La Presse* received a communiqué from the Amable Daunais cell (opération CEGEP). It expressed opposition to the administration of the CEGEPs. Madame Devault testified before the Keable Commission that she had furnished the paper for this communiqué.
- April 15 — Another police force received information that a group of students at a CEGEP in Montreal were planning to kidnap a federal or provincial minister about May 10. The R.C.M.P. was advised. On May 12 another police force advised the R.C.M.P. that, as the kidnapping did not occur, members of the other force would interview the participants in the plot.
- May 8 — A second communiqué from the Joseph Duquet organization cell was sent to radio stations CKLM and CKAC in Montreal and a copy was found near the cathedral in Montreal. It criticized the policies of the provincial government and attempted to justify the use of violence. Madame Devault testified before the Keable Commission that she typed the communiqué.
- May 20 — The R.C.M.P. received information that the Laliberté network of the F.L.Q. planned kidnapping in order to finance F.L.Q. operations. This information had been obtained from a person who, according to a document received dated June 2, 1971, had met Jacques Laliberté on numerous occasions. In addition to the access which the person had to information about the activities of the cell, the R.C.M.P. had a human source in the cell.
- July 8 — The Désormeaux network planned an armed robbery of a food market. The conspirators were said to have been the authors of a robbery of a restaurant in Montreal on May 6, 1971. The R.C.M.P.'s knowledge of the planning of the forthcoming robbery was recorded in an R.C.M.P. telex message dated July 22, 1971. The R.C.M.P. expected to learn in advance of the date and place of the proposed hold-up.
- August 3 — A bomb exploded at a Steinberg store in Arvida. On August 18 the Narcisse Cardinal cell of the F.L.Q. claimed responsibility in a communiqué. On August 18 another police force advised the R.C.M.P. that the communiqué had been issued by its source. Madame Devault testified before the Keable Commission that she had done so.
- Late August — Toward the end of this month members of the F.L.Q. raided three Quebec Civil Defence depots. These raids resulted in the theft of equipment used for camping, communications, etc. The Department of National Defence considered that the nature of the things stolen suggested that a significant rural

- guerrilla group might be set up. In early October 1971, three persons were arrested in connection with these robberies.
- September 3 — A bomb exploded at the Bell Canada office at Dorion, causing damage of over \$200,000. Investigation of this crime was unsuccessful.
- September 10 — Some Montreal newspapers published a communiqué from the F.L.Q. which stated that Pierre Vallières had gone into hiding. He reappeared in December 1971. Until then, the police forces tried to find him without success.
- A bank was robbed in Montreal by Pierre Boucher (a convicted F.L.Q. terrorist, who had escaped from the Archambault prison on August 30) and by two others, including one man believed to be an F.L.Q. activist. (This event was referred to by Mr. Goyer at Vol. 123, p. 19317, when he was quoting from a report dated October 25, 1971, that was prepared by the Security Planning and Research Group of the Solicitor General's Department — Ex. MC-70.)
- September 24 — A Caisse populaire at Mascouche was robbed, one of the robbers (Pierre Louis Bourret) was killed, and another police force arrested three persons on October 4.
- September 25 — The Elie Lalumière "commando" of the Viger information cell issued a communiqué. It claimed responsibility for a robbery and a burglary.
- October 7 — A Montreal radio station, CKLM, received a call informing it that a communiqué could be found in a trashcan at the Rosemont Métro Station. The communiqué was found; it was signed by the Viger information cell. It proclaimed the continued existence of the Viger cell [i.e. despite recent arrests]. Another police force advised the R.C.M.P. that it knew the identity of the author of the communiqué. According to the testimony of Madame Devault before the Keable Commission, she had furnished the paper for the communiqué and kept her Montreal Police handler informed.
- October 7 — A cell planned to kidnap Premier Robert Bourassa on October 15, 1971. This information was stated in a telex message from the Security Service in Montreal to Headquarters on October 15. The information had come from another police force, and the message reported that the other force "has all the individuals belonging to this group under control". This wording may mean no more than that the identity of the individuals was known to the police force and that they were being watched. The force in question had a surveillance team in the community where the group lived.
- October 17 — Radio station CKLM discovered a communiqué from the "Frères chasseurs" cell of the F.L.Q. near a Métro station at the corner of Peel and Maisonneuve Streets in Montreal. It contained an implied threat to kidnap Premier Bourassa. Two other communiqués were received, both handprinted, one from the O'Callaghan cell and one from the Charles-Ambroise Sanguinet cell. Both threatened selective assassination.

- The Pierre Louis Bourret cell of the F.L.Q. issued its first communiqué. It was published in *Le Journal de Montréal*. As we have already stated in Chapter 3 of this Part, this communiqué, the Frères Chasseurs cell's communiqué issued the same day, and the second Bourret cell communiqué issued on October 23, were all issued by a source of the R.C.M.P.
- October 22 — Communiqué No. 1 of the Minerve cell was received by the *Journal de Québec*. It attacked the provincial government and appealed to workers.
 - Another communiqué was received by a Quebec City radio station from the Amable Daunais cell. It contained a threat of selective assassination.
- October 23 — The Pierre Louis Bourret cell issued its second communiqué. It was found at the corner of Christopher Columbus and Sauvé Streets in Montreal and a copy was received by a reporter for *Québec Presse*.
 - A communiqué from the Narcisse Cardinal cell was received by a Quebec City radio station. It criticized the capitalist system.
- October 25 — A reporter for radio station CKLM found a communiqué issued in the joint names of eight cells (Viger, Bourret, Nelson, Ouimet, Délorimier, Duquet, Cardinal and Daunais). It identified those cells as officially being cells of the F.L.Q. According to the testimony of Madame Devault before the Keable Commission, she participated in issuing the communiqué and kept her Montreal Police handler informed.
- October 26 — A second communiqué from the Minerve cell was received by *Le Journal de Québec*. It criticized the policies of the provincial government and supported the use of violence.
- October 29 — A bomb was found in a letterbox situated at the main entrance to the Rouyn seminary.
- Late October, — During this period two additional communiqués were issued, one by the Délorimier cell and one by the Fils de la Liberté cell. The first announced the formation of the Délorimier cell and criticized political leaders. The second proclaimed support for the F.L.Q.
- early November
- November 4 — A bomb exploded at Rouyn. Five young persons were injured while handling the bomb and were arrested.
- November 5 — A communiqué from the Front de Libération de l'Abitibi-Témiscamingue was received by a radio station in Abitibi. It attacked American imperialism and contained threats in regard to certain persons in the area.
- November 9 — According to R.C.M.P. files, another police force's source and 19 informed that force that a person planned to plant a fake bomb at Dorval Airport and demand \$200,000, which would be sent to Jacques Lanctôt, an F.L.Q. exile, in Cuba. As predicted, a communiqué from the Cellule de financement Jalbert was found at Dorval Airport on November 19, accompanied by a detonator and a demand that Air Canada send

- \$200,000 to Jacques Lanctôt in Cuba. Madame Devault testified before the Keable Commission that she collaborated in the issuing of this communiqué and it is therefore obvious that she was the source of the information. The R.C.M.P. file gives other reasons as well for not taking the incident seriously.
- November 11 — The Viger cell issued a communiqué, which attacked the "system" but stated that it is not necessary to use violence to improve society.
- November 19 — A communiqué from the Michèle Gauthier cell was received by *Le Journal de Montréal*. It called for the liberation of workers. Within a week the R.C.M.P. was advised that it had been issued by a source of the Montreal Police. According to the testimony of Madame Devault, she participated in the production of the communiqué.
- November 25 — A bomb exploded in a Montreal Police truck. On November 29, a communiqué from the Narcisse Cardinal cell was received by *Le Journal de Montréal*, which published it on November 30. The communiqué claimed responsibility for the bomb placed in the Montreal Police truck on November 25.
- November 30 — A communiqué from the F.L.Q. on the general strike was received by *Montréal-Matin*.
- December 4 — A bomb exploded under a Post Office truck in Montreal, and another bomb exploded at a private firm in Montreal. R.C.M.P. records show that, according to a source of another force, a person had approached the source and asked that the source prepare a communiqué claiming responsibility for the two explosions but the source refused to do so because not enough details were available.
- December 7 — Another force's source informed that force that the F.L.Q. planned to commit a robbery that evening during a bingo at a parish hall at the corner of Robin and Amherst Streets in Montreal. That evening, four persons were arrested during the robbery of a bingo cashier at that location. The R.C.M.P. were informed of these details the next day. The R.C.M.P. file indicated that Madame Devault participated in the planning of this robbery, and she confirmed this in her testimony before the Keable Commission. A document on the R.C.M.P. file makes it clear that, through her, the other force was fully aware of the forthcoming robbery in advance.
- December 9 — The R.C.M.P. received a report that members of the Comeau network planned to extort money from the president of a food retail chain. However, some members of the R.C.M.P. did not take this threat seriously because they were sceptical about the instigator of the plans, whom the R.C.M.P. may have suspected of being a source of another police force.
- December 13 — Pierre Vallières published an article in *Le Devoir*, explaining his dissociation from the F.L.Q. and violence, and recommending support for the Parti Québécois.

- December 17 — A communiqué issued by the Perreault cell disavowed the new approach of M. Vallières.
- December 20 — *Le Journal de Montréal* received a communiqué from the "Phase 2 Libération cell" which questioned the position taken by Pierre Vallières and demanded that M. Vallières explain his position in a television interview.
- December 20 — *Montréal-Matin* published the text of a third communiqué issued by the Minerve cell. (This communiqué was in fact issued by members of the R.C.M.P. The circumstances are described in Part VI, Chapter 6.)
- December 21 — In Exhibit D-37 the R.C.M.P. claimed that the F.L.Q. was planning a kidnapping as of this date. Our counsel and the R.C.M.P. could not find any documentation referring to this, although this may be the same matter as a written report that on December 26, Poupette reported to the police force of which she was a source that another person had said that a group of the F.L.Q. was going to carry out a kidnapping.

(We add that there are two events that were referred to in Exhibit D-37 as having occurred in 1971 that in fact occurred in 1972: they were dated October 6 and 11. That Exhibit also contained an item dated October 16, 1971, but we have not included it in our chronology because the R.C.M.P. has been unable to locate any document to substantiate it.)

13. Thus, our examination and analysis have demonstrated that of the items listed the only ones that could be said to be foundations for alarm by October 1971 were those that occurred in July, August and September. Three of the August and September events were specifically relied upon by Chief Superintendent Cobb when he testified that the events that particularly gave rise to concern that in October 1971 there would be an outbreak of acts to make the first anniversary of the October crisis of 1970 were:

- (i) the raid in August on three Quebec civil defence depots, which resulted in the theft of survival equipment that could be used to equip a rural guerrilla operation;
- (ii) the bank robbery at Mascouche in September;
- (iii) the disappearance of Pierre Vallières in September and his announcement that, in the words of Mr. Cobb, "he was going underground to resume the leadership of the armed struggle".

He stated that the Security Service saw these events as

confirmation of the information that was also in hand that there was an offensive being mounted — an offensive, as you can see there, that appeared likely to involve an armed rural guerrilla operation financing itself from bank robberies, and led by a person of the intellect of Pierre Vallières, who, as you know, had previously led operations of the same kind in which more than one person was killed (Vol. 68, p. 10954).

14. To some extent we feel bound to discount the rather broad proposition advanced by Chief Superintendent Cobb in his testimony in 1978, and to

observe that there was less objective foundation for the alarmist advice that was given to the government in October 1971 than was required to justify that advice. However, we readily concede that we have the advantage of hindsight, and that the presence of police informers in violence-prone groups does not altogether eliminate the danger which those groups may pose to the lives and property of innocent persons. Nevertheless it is unrealistic to ignore two facts. The first is that each of the two F.L.Q. cells which, according to an R.C.M.P. analysis dated November 24, 1971, entitled "Current F.L.Q. Groups" (Ex. MC-195), were considered to be the most active, was penetrated and under careful surveillance. One of them (Laliberté) consisted of persons who were well-known to the police forces and had been infiltrated by an R.C.M.P. source. The other (Comeau) was active only in issuing communiqués, and was infiltrated by a source of the Montreal Police, and one of its members may have been a source of another police force. To the extent of the access the police forces had to the plans of the known cells regarded as most active, the police were in a better position than they had been in October 1970.

15. Despite reservations based on our present knowledge that the police forces in Quebec had a better intelligence-gathering capacity in 1971 than had been realized until recently, we accept that there were grounds for continuing apprehension in October 1971 that violence for separatist purposes might continue and even escalate. We realize that the disappearance of Pierre Vallières may well have reminded members of the Security Service of the disappearance from observation in the late summer of 1970 of some of those persons who later were involved in the Cross and Laporte kidnappings. It is also appropriate to note again that there may have been some degree of concern arising from the possibility that the members of the Quebec Police Force would go on strike. While we realize that some members of the Security Service in Montreal were aware that as many as eight of the communiqués issued between January 1 and October 7 had been issued by or with the full knowledge of a human source of another police force, and that the same source gave full information concerning the Délorimier postal office bombing attempt, nevertheless there were enough incidents remaining unsuccessfully investigated and about which no similar inside information was available, that there were grounds for genuine concern. On the other hand, while we try to avoid the danger of wisdom long after the event, we cannot help but wonder whether the same degree of concern would have existed if the analytical and reporting functions of the Security Service had been of a higher calibre. If the latter had been so, there might have been a comprehensive analysis at management level, that would have demonstrated, that there were important reasons for some discounting of the cumulative effect of the events of 1971.

16. Even if the members of the R.C.M.P. were genuinely concerned that violence might continue and escalate, that, of course, is no justification for illegal or improper activities. Nor is it a justification for the fact that, somehow — we do not suggest that it was with the knowledge of Mr. Starnes or anyone else in senior management who reported to the Solicitor General — the Minister was not informed of the extent to which the events of 1971 were fully known to some members of the R.C.M.P. and that at least one of the other

police forces had a human source who could provide timely and accurate information about the activities of some F.L.Q. cells. (The extent of this failure to provide full information to the government was discussed in Chapter 3 of this Part.)

B. THREE ATTEMPTS TO RECRUIT HUMAN SOURCES

17. In this chapter and Part VI, Chapter 4, we examine seven cases in which members of the R.C.M.P. Security Service in Montreal approached suspected members of the F.L.Q. in 1971 and 1972. The objective was to attempt to recruit them as sources of information about F.L.Q. groups and individuals. If recruitment failed, it was hoped that knowledge in the milieu that the suspect had been approached by the R.C.M.P. might cause the suspect to be distrusted and cause members of the group he was associated with to be concerned about the extent to which the R.C.M.P. knew of their affairs.

18. To a certain extent, therefore, the objective of this programme was, failing successful recruitment, one of disruption. We note that disruptive tactics were not a phenomenon peculiar to Quebec, inspired by the fears of a repetition of the October crisis of 1970 in that province. In Part VI, Chapter 12 we discuss Operation Checkmate, a national programme of disruptive tactics in the years 1972 to 1974. All of the examples of that programme that are known to us occurred outside the province of Quebec.

19. The issues we shall examine relate not to the merits of the source recruitment programme itself, but to some ways in which the approaches were made. The question to be asked in each of these cases is whether the methods employed were "not authorized or provided for by law". In the three cases we report in this chapter we conclude that there was no such conduct. Our report as to the other four cases contains comments criticizing the conduct of some of the R.C.M.P. members who were involved, and therefore that report is found in Part VI.

20. It is important to remember that these seven cases represent only part of a large number of approaches that were made. The other instances of the programme, when the facts were reviewed by our legal counsel, did not give rise to any question of illegality.

21. Testimony concerning six of these cases was heard in public on the following dates in 1978: March 6, 7, 13, 14, 15, 16; May 2, 3, 4, 9, 10, 11; June 8, 13, 14, 15, 17; July 17, 19, 20; September 26, 27, 28. The corresponding numbers of the volumes of transcript are 27, 28, 29, 30, 31, 32, 40, 41, 42, 43, 44, 45, 53, 54, 55, 56, 64, 67, 68, 78, 79 and 80. Testimony was heard *in camera* on June 7 (Vol. C13, released in edited form publicly as Vol. 66) and June 14 (the testimony of the person who was Case No. 5). Testimony concerning Case No. 5 was heard *in camera* because the approach in that case met with a degree of success in that the suspect became a source for the Security Service for a time, and we considered that it would not be in the public interest to disclose this identity.

22. All the testimony concerning these cases was given in French, the words quoted are in translation, and the translation is ours.

General background to the recruitment of human sources

23. Early in 1970 the Security Service decided to form a new branch, "G" Branch, to attend to certain functions that previously had been carried out by the Countersubversion Branch. Thus, in late May 1970, Sub-Inspector Ferraris was transferred to Headquarters to set up "G" Branch. He testified that its objectives were as follows:

- to identify the movements of subversive and terrorist groups among the francophone population in Canada
- the principal aim was to prevent terrorist activities.

(Vol. 27, pp. 4371 and 4391.)

By September 28, 1970, he had drawn up directives, which were approved by the Director General, Mr. Starnes, which stated that the objective of "G" Branch was that it was to be strictly responsible for dealing with problems relating to terrorist and separatist activities in Quebec. . . (Ex. M-33, Tab 2). The same document stated that the establishment of "G" Branch reflected in its own way the priority that the federal government gave to national unity. It added that the "sheer size of the problem in Quebec" would require the Security Service to concentrate its efforts on obtaining sources at the highest possible level in organizations clearly of interest to us. Hence, the objective of "G" Branch was to obtain as much information as possible on several kinds of activity, the first of which was all separatist/terrorist activities (Fr.: toutes les activités séparatistes et terroristes) in the Province of Quebec. We have noted that this phraseology is open to differing interpretations in the English and French versions.

24. Very shortly thereafter, on October 5, Mr. Cross was kidnapped and the October crisis was under way. For the next two months the development of such a programme took a back seat to the use of all available personnel for purposes immediately connected with the crisis.

25. On February 12, 1971 Assistant Commissioner Parent approved a directive entitled "Re: Counter-Terrorist Program". This had been prepared by Inspector Long, Officer in Charge of the branch in charge of sources at Headquarters. In regard to "Terrorist Targets" the memorandum itemized the following, which were to be among the "future endeavours" of "G" Branch which were described as having to be "all encompassing and extremely varied":

- (a) Human source penetration by infiltration (long term);
- (b) Undercover operations by regular members (terminating) [Mr. Ferraris explained this as meaning "short term"];
- (c) Disruption — coercion and compromise;
- (d) Technical sources as required.

The memorandum also stated:

In view of indications that further serious problems can be anticipated from the F.L.Q. in the next few months, it is believed that any program that can

be implemented quickly to minimize the effects of any F.L.Q. planned action should receive top priority. It is contended that item (c) "Disruption — coercion and compromise" has this potential. It is our belief that a well conceived plan, properly administered, could have considerable impact on the F.L.Q. movement.

26. On June 11, 1971, Sub-Inspector Ferraris, Officer in Charge of "G" Branch, wrote a memorandum to the D.S.I. (Director of Security and Intelligence) (Ex. D-2). In it he recognized that the Security Service had to reappraise methods and instructions previously adhered to in regard to source development. He stated that the development of human sources was to receive "top priority". He listed several means that were to be in addition to "normal methods of source development", one of which was:

III — Disruptive Tactics

(a) Selective Interviews of Activists

This method was used during Expo 67 and did meet with some success. If no agents develop out of this, we have noted that it has in some cases neutralized the individual.

(b) Disruptive Tactics

Making use of sophisticated and well researched plans built around existing situations such as, power struggles, love affairs, fraudulent use of funds, information on drug abuse, etc., to cause dissension and splintering of the separatist/terrorist groups.

(c) C.O.D.

Approach known separatist/terrorists and offer them a lump sum payment in return for good information leading to the arrest and or neutralizing of terrorist groups. They would be run similar to criminal sources on a short term basis, with cash paid on delivery for good information. They would be aware that if they were caught committing a criminal act they could expect no help from us.

27. On July 26, 1971, Assistant Commissioner Parent sent to the Commanding officers of the Divisions in New Brunswick and eastern Ontario (Ottawa) and to the Officer-in-Charge of the Security Service in Montreal a directive (Ex. D-7) that reiterated the ideas expressed in Sub-Inspector Ferraris' memorandum and used substantially the same wording:

III — Disruptive Tactics

(a) Selective Interviews of Activists

This method has been used in the past with some success. It is felt that with proper handling and follow through, this type of operation could have good short term results.

(b) Disruptive Tactics

Making use of sophisticated and well researched plans built around existing situations such as power struggles, love affairs, fraudulent use of funds, criminal activities, etc. have good potential to splinter groups and send activists to jail.

(c) C.O.D.

Approach known separatist/terrorists and offer them lump sum payment in return for information leading to the arrest and/or neutralizing of terrorist groups. They would be run in the same manner as criminal sources, with the understanding that they could not expect any special favours if they are caught in a similar situation.

However, Assistant Commissioner Parent's memorandum did not include the words "coercion and compromise".

28. The evidence does not indicate that there was any attempt made by those developing policy at Headquarters to interpret such words as "disruption", "coercion" and "compromise" for the benefit of those who were to apply them in the field, such as Inspector Cobb, who was in charge of "G" Section in Montreal from May 1971 to August 31, 1972, or the members of the unit within "G" Section in Montreal, "G-4", which was charged with the responsibility for developing sources among terrorist elements and within movements that lent support to terrorists. This unit was formed in September 1971 and was headed by Sergeant Laurent Hugo.

29. In May 1972 Assistant Commissioner Parent asked for an analytical report on the various methods of approach to potential sources, which had been used during the previous six months in the anti-terrorist programme. Inspector Cobb replied that a document was already being prepared by a civilian employee, Marie-Claire Dubé, who had been in "G" Section since February 1972. She had been employed as an analyst, having graduated with a B.A. in psychology. Her 42-page report, entitled "Activities of Sub-group G-4 of "G" Section since September 1971" (Exs. D-35 and D-36), was submitted to Sergeant Hugo on June 9, 1972, and Inspector Cobb sent it to "G" Branch at Headquarters on July 7, 1972. Chief Superintendent Cobb testified that her report was intended as no more than a report to be used for learning and training purposes. Suggestions were made to us that Mademoiselle Dubé was young and inexperienced, and that some of the language used by her was really her own and not that of the members of G-4 whom she had interviewed. Because some reference is made to her report in these chapters, we express our view, having heard her testify and compared her report with testimony we have received from a number of the men she interviewed, that her reporting of the facts as they were given to her was accurate and reliable.

Case No. 2: Jean Castonguay

30. In 1970 Corporal Normand Chamberland was part of G-2 Section in the Security Service in Montreal, the role of which was to collect information on terrorist groups. At the beginning of July he telephoned Jean Castonguay, and, after identifying himself as a member of the R.C.M.P., he asked to meet him at his office on St. Catherine Street in Montreal. He wanted to know whether Mr. Castonguay had been involved in helping two persons who had left Canada to go to Cuba while they were on parole. Some days later, Mr. Castonguay met Mr. Chamberland as arranged. According to Mr. Chamberland Mr. Castonguay told him that he led a steady life, was not involved in anything, was living

with a woman whom he considered his wife, that he did not want to become involved again in anything whatsoever, did not want to get mixed up in anyone's business, and did not want to reveal anything which might embarrass him later. The interview lasted about half an hour and Mr. Castonguay left.

31. One year later, still interested in knowing whether Mr. Castonguay had participated in the travels of the two persons to Cuba, Mr. Chamberland considered it appropriate to interview Mr. Castonguay again. He spoke about it to Mr. McCleery who authorized him to do so. Taking into account that Mr. Castonguay might eventually become a human source, Mr. Chamberland, at the beginning of October 1971, met Mr. Dubuc, a member of "G" Section, who had some responsibility for the recruitment of sources. Mr. Chamberland explained to him that Mr. Castonguay led an orderly life and might respond favourably to an offer to become a source since he seemed to be in financial difficulty at the time. This suggestion appealed to Mr. Dubuc, who agreed to review Mr. Castonguay's file. He spoke about the matter to his superior, Mr. Hugo, and Mr. Hugo authorized him to make a payment to Mr. Castonguay of up to \$100 should the occasion arise.

32. On October 17, 1971, Mr. Chamberland decided to approach Mr. Castonguay within the next few days. He learned that Mr. Castonguay worked at night. On October 19, Mr. Chamberland agreed with Mr. Dubuc that they would meet Mr. Castonguay the next morning when Mr. Castonguay finished his work, which normally was about 7 o'clock. About 6 o'clock on the morning of October 20, Messrs. Dubuc and Chamberland arrived at the parking lot next to the warehouse where Mr. Castonguay worked. They had only one vehicle and they were not in contact by radio with anyone else. They waited for Mr. Castonguay until about 9:30 a.m. because he worked overtime that day.

33. After Mr. Castonguay left the warehouse, they followed him for about 15 minutes and finally, when they were close to Mr. Castonguay's home, Mr. Dubuc brought his vehicle parallel to that driven by Mr. Castonguay so that Mr. Castonguay could see that Mr. Chamberland was signalling him with his hand. Mr. Castonguay slowed down, and stopped next to the sidewalk in a no-parking zone, and Mr. Dubuc stopped his vehicle behind Mr. Castonguay's vehicle. Mr. Chamberland got out of his vehicle and went towards Mr. Castonguay's car on the passenger side. Mr. Castonguay unlocked the door and Mr. Chamberland got in. He says that it was not necessary that he give his name, because it was evident that Mr. Castonguay recognized him when Mr. Chamberland waved at him from the R.C.M.P. vehicle. Indeed, he says that Mr. Chamberland stuck out his right hand to shake hands as Mr. Chamberland sat down in Mr. Castonguay's car. Mr. Chamberland says that he asked Mr. Castonguay if he wanted to come and have a coffee with him and his colleague, and that Mr. Castonguay accepted. Mr. Chamberland says he then suggested that Mr. Castonguay park his car around the corner, which he did. Then Mr. Castonguay and Mr. Chamberland went to the vehicle in which Mr. Dubuc was sitting, and got into it. Mr. Chamberland says that he introduced Mr. Dubuc by his name but did not identify him as a member of the R.C.M.P. because he presumed that Mr. Castonguay would assume that Mr. Chamberland's companion was from the R.C.M.P.

34. There is no essential difference between the version of the events just described, based on the evidence of the two members of the R.C.M.P. who were involved, and that given in testimony by Mr. Castonguay. Mr. Castonguay considered that the wave or gesture of Mr. Chamberland toward him was an indication that he should stop, and we think that that was his interpretation of what Mr. Chamberland was doing. It was what Mr. Chamberland intended, for Mr. Chamberland certainly did intend to speak to Mr. Castonguay before Mr. Castonguay reached his home. Mr. Castonguay said that he did not recognize Mr. Chamberland, but he also said that he realized that the two men were policemen. He testified that the policemen who approached him said that they wanted to speak to him for a minute, and that he (Mr. Castonguay) said "of course, I am civilized, come to my home, I live just around the corner". However, he says, the policemen said that they wanted to speak to him alone and asked whether he could come into their car. Mr. Castonguay told us that he agreed to do so, and he confirmed to us that he had the choice of going with the policemen or not going with the policemen. He testified that he told the policemen that he would go in order to see what it was they wanted, and that, once he got into the car, they told him that they wanted to speak to him for a couple of minutes in the car. He says that the car then started moving, and what passed through his head was that these two men were either going to take him somewhere into the woods and kill him or that they wanted to frame him, for example, by saying that they had found a pound of cocaine or a pound of hashish in his possession, in which case, as he already had a criminal record, he would be "cooked like a rat". Consequently, he says, he was afraid.

35. In the R.C.M.P. vehicle Mr. Castonguay sat alone in the back seat. After driving for about 10 minutes in the streets of Montreal, they went into a restaurant and had a discussion over a cup of coffee. Mr. Castonguay told the R.C.M.P. members that he led a steady life and was not interested in co-operating with them. However, after about 15 minutes he agreed to continue the conversation in a place where they could have a discussion more easily. Mr. Dubuc slipped away to rent a room in a nearby motel, then returned to the restaurant and the three of them went to the motel.

36. The interview there lasted until 1:30 in the afternoon. Mr. Castonguay told them that in 1968 he had indeed travelled to Cuba with the two persons in whom Mr. Chamberland was interested. Mr. Dubuc suggested that he become a source. According to Mr. Dubuc, Mr. Castonguay indicated that he was tired, that he had worked all night, and that he would prefer to discuss the offer with his wife and go to bed. Mr. Dubuc says that Mr. Castonguay admitted that the offer was tempting. However, Mr. Castonguay testified that he agreed to think the matter over for a couple of days in order to bring the interview to an end and get away. Mr. Castonguay told us that while they were in the motel room he was obsessed again with the thought that the policemen could say that they had found a pound of cocaine or a pound of hash in the room, and the result would be that he would go to jail for 30 years. Therefore, he says, he gained time in the sense that he let them know very clearly that he was not interested in any form of co-operation with them but they did not take his "no" for an answer.

37. Before leaving the motel, Mr. Castonguay agreed to meet the two policemen again. He was then driven to a point near his home.

38. According to Mr. Chamberland, Mr. Castonguay phoned him on October 24, at the telephone number Mr. Chamberland had given him, and arrangements were made to meet the next day at a downtown hotel.

39. As arranged, the next day, the two policemen met Mr. Castonguay in a room in the hotel. Mr. Castonguay told them that he was not interested in becoming involved again in the terrorist milieu.

Conclusions

40. If Mr. Castonguay's evidence is accepted he was afraid for his safety once he found himself being driven off, and he says that the same fear existed in his mind when he was in the motel room. However, we accept the evidence of Mr. Dubuc and Mr. Chamberland that nothing was said or done to justify such an apprehension. Moreover, it is unnecessary to rely upon the acceptance of their evidence in order to reach the conclusion which we do reach. We think that Mr. Castonguay's claims that he was afraid are rendered incredible by his admission that he could have left the restaurant at any time. On being asked about this, he said that the restaurant was a public place and there were many witnesses, but the fact remains that if he had been afraid, he could have left the two policemen at the restaurant without any difficulty. It is, moreover, of importance to note that Mr. Castonguay admitted that at no time during the entire series of events did the two policemen threaten him in any way or use any violence against him. He was very emphatic on that point. Our conclusion, therefore, is that there was no improper conduct on the part of the R.C.M.P. members involved. They were entitled to discuss the kinds of matters that they did discuss with Mr. Castonguay. Whatever his reasons, he agreed willingly to accompany them in their car, in the restaurant, and in the motel. Even though Mr. Castonguay told us that before he went to the second meeting he had arranged with his wife that she would contact his lawyer if he did not return. There is no evidence whatsoever of false arrest, false imprisonment, kidnapping, or any other conduct which is reprehensible in any way.

Case No. 3: Maurice Richer

41. Mr. Hugo studied the file concerning Maurice Richer, and noted that this young man, 20 years of age, had participated in the renovation of the home of one of the principal members of a terrorist cell, and that some important persons from that milieu had already met there. Mr. Hugo thought that Mr. Richer might become an interesting informer.

42. Members of the Security Service therefore kept an eye on his movements for some days. Then Mr. Hugo, who was in charge of the operation, decided that Mr. Richer would be approached on November 10, 1971. He knew that Mr. Richer finished work about the supper hour of that day, and Mr. Hugo went with Corporal Langlois to Mr. Richer's home. Mr. Langlois parked the R.C.M.P. car among other cars along the edge of the street. The two men waited while Mr. Dubuc watched Mr. Richer's residence. This surveillance was

the only participation of Mr. Dubuc in the entire operation. About 7:00 o'clock in the evening, Mr. Hugo learned from those who were patrolling in the neighbourhood that Mr. Richer had just got off the bus.

43. Mr. Hugo went to meet him. He met him on the sidewalk about 100 feet from his home. He called him by his name and told him that they would like very much to speak to him. Then Mr. Hugo gave his name and identified himself as a member of the R.C.M.P. Without having any warrant and without having any reason to believe that Mr. Richer had committed any offence whatsoever, Mr. Hugo asked him to identify himself. He also asked him to put his hands on the roof of one of the vehicles parked on the edge of the street, in order to search him. Mr. Richer acquiesced readily to these demands without asking any questions. According to Mr. Hugo, Mr. Richer could have run off. Mr. Richer was not asked whether he felt free to go if he wished at that time, but there is no indication in his testimony that he felt constrained, either then or during the evening and the night that followed when he was in the company of members of the R.C.M.P. at a restaurant and at a motel. Mr. Richer got into a car with Mr. Hugo and Mr. Langlois, who was the driver. Mr. Langlois drove off towards the northern part of Montreal. According to Mr. Richer, after driving a short distance the car stopped and he got into another car in which there were two other persons who identified themselves as members of the R.C.M.P. Mr. Richer's memory is that during the rest of the evening and night he was not in the company of the R.C.M.P. member who had first stopped him. However, Mr. Hugo and Mr. Langlois testified in detail about the events during the balance of the evening and the night, and we believe that Mr. Richer's memory must have failed him as to this matter. The discrepancy is of little consequence, as there is no evidence on the part of Mr. Richer which could be regarded as in the nature of a complaint against the conduct of the two men in whose company he spent the balance of the evening and the night.

44. They went to a restaurant where the two members of the R.C.M.P. had something to eat but Mr. Richer did not. They then drove further north, outside Montreal, and Mr. Richer did not know where they were going. Finally they stopped at a motel and went into a room there. During the balance of the night, Mr. Richer sat in a chair while the two men conversed with him. According to Mr. Richer, they asked him about his life and his friends, and why he had renovated the house we referred to earlier. He says that there were no threats or violent actions directed against him. When morning came he was driven back to Montreal and dropped off at the Metro so that he could go to work. He says that during the course of the night he was offered something to eat and drink although he did not take anything. At all times he was in the company of either one of the R.C.M.P. members or both of them. At some time during the night he says they offered him money if he would work for them, but he refused to do so. He says he did not ask to leave the motel and did not think of whether he was free to get up and go; he says he was simply waiting until it came to an end.

45. Mr. Richer does not recall having seen the policemen afterwards, but Mr. Hugo says he remembers having gone to see him at his place of work two days

later and being advised that Mr. Richer had not changed his mind and still did not wish to co-operate with them. Mr. Hugo says that the R.C.M.P. did not try to see him again.

Conclusion

46. During the whole of the night in question, there is nothing in the evidence, even in that of Mr. Richer, to suggest that his liberty was constrained or that he was intimidated in any way. When he testified, he was asked whether he had been afraid, but he did not say that he had been. He said he was uneasy and nervous, but he said that he had a nervous disposition. He also said that he was tired. However, the evidence as a whole, particularly that of Mr. Richer, satisfies us that the circumstances of this case were very different from those of Mr. Laforest. There is no evidence that Mr. Hugo and Mr. Langlois or any other member of the R.C.M.P. employed any form of conduct which is in the nature of unlawful arrest, false imprisonment or kidnapping. No doubt the members of the R.C.M.P. hoped that Mr. Richer would become a source, but on this occasion, on the basis of the evidence before us, it appears that the approach they took was entirely one of subtlety, in the hope of persuading Mr. Richer to co-operate. While it may seem strange that Mr. Richer would willingly stay up all night talking to policemen without really knowing what the object of their interest was, it nevertheless remains the case that from beginning to end there is no evidence that his liberty was constrained.

47. Consequently there is no evidence of any criminal offence on the part of Mr. Hugo, Mr. Langlois or any other member of the R.C.M.P., or any conduct on their part which is in any way reprehensible.

Case No. 5

48. Testimony concerning this case was heard *in camera*. The person, whom we shall describe as "No. 5", was known to be in continual contact with several suspected terrorists. Corporal Dubuc, having realized this from reading files about the middle of January 1972, looked for No. 5 with the help of Constable Daigle. As they had no success in locating him, Mr. Dubuc asked the watcher service for assistance. They were successful in locating him, and this resulted in Mr. Dubuc and Mr. Daigle sitting in a car near No. 5's place of work, waiting for him to emerge. When he did so about 10:00 a.m., and approached Mr. Dubuc's vehicle, Mr. Dubuc went towards him on foot, identified himself as being a member of the R.C.M.P., produced his badge, and asked "Would you have any objection to talking with us?" According to Mr. Dubuc, No. 5 said "No objection" and got into the car. No. 5 told us that he got into the back seat, and was alone there. Then, Mr. Dubuc told us, he said to No. 5 that he wanted to discuss several subjects and had a certain offer to make to him, and Mr. Dubuc asked him if he would have any objection to going to a motel so that they could discuss it more freely. Mr. Dubuc says that No. 5 acquiesced without hesitation.

49. In a room at a motel, according to Mr. Dubuc, No. 5 was told that if he became a source, he would receive financial assistance. No. 5 confirmed to us that that offer was made, and testified also that the policemen told him that he

had done certain things and that drugs could be found at his residence, and that that could create problems. No. 5 told us that he accepted the offer during the first third of the conversation. Mr. Dubuc estimated that the discussion in the motel room lasted about four hours; No. 5 says that it was at least five or six hours. Within that time, he says, having received a positive reaction to his offer, he left the motel to go to see Inspector Cobb, to advise him that No. 5 was favourably disposed to the approach and had financial difficulties, and to seek authority to pay him \$100. Having obtained the authority to make such a payment, Mr. Dubuc returned to the motel. Another hour and half or more of discussion ensued, concerning No. 5's financial difficulties and how much he might earn as a source. Mr. Dubuc asked No. 5 to tell him about the people he was seeing, and No. 5 replied by giving names of persons and talking about what he had done with them. This kind of discussion went on both before and after the \$100 was paid to No. 5. Mr. Dubuc testified that as far as he was concerned, there was no intimidation of No. 5, and No. 5 confirmed that he had not been threatened. Mr. Dubuc asserted to us that he had not threatened to make difficulties for No. 5 in regard to No. 5's activities with drugs, even though he knew of them. Mr. Dubuc told us that No. 5 did not ask permission to leave the motel room and was never refused permission to leave. On the contrary, Mr. Dubuc says that towards the end of the discussion No. 5 appeared to be enthusiastic about his new role. No. 5, however, testified that at one point he asked if he could go and the policemen told him: "No, we haven't finished with you yet." This was, he said, after the passage of some hours. When the meeting ended, the R.C.M.P. members drove No. 5 to within a few blocks of his home.

50. They met again the next day after No. 5 telephoned Mr. Dubuc. They went for a long drive in the country and Mr. Dubuc gave No. 5 some literature which he thought would help No. 5 understand the politics of the time — Mr. Dubuc had come to realize that No. 5 was not "politicized" even though he knew people in the terrorist milieu.

51. Other meetings followed, over a period of six months. More sums of money were paid.

52. No. 5 himself did not, in his testimony, claim to have been taken away in the car against his will, and the only circumstance in the motel room that gives rise to the possibility of unacceptable behaviour is the testimony of No. 5 that he asked if he could leave and was told that they were not yet finished with him. However, it is clear from his testimony that he had by that time already accepted their offer and given them some information, and that the reply he got did not mean that if he tried to leave he would be restricted. Rather, it meant that they wanted to have more time with him discussing other people. By that time he was a willing source of information and there is no reason to treat his evidence as indicative of any restraint on his liberty.

53. Therefore our conclusion is that the conduct of the R.C.M.P. members is not open to reproach.

CHAPTER 5

THE FAILURE TO REPORT OPERATION HAM TO MINISTERS

Introduction

1. In Part VI, Chapter 10, of this Report we discuss in detail the operation of the Security Service which was planned and executed under the code name Operation Ham. It involved surreptitious entries on several occasions into private commercial premises, the removal on one occasion of computer tapes containing data concerning the members of the Parti Quebecois, the copying of those tapes and their subsequent return to the private premises.
2. The testimony concerning the knowledge of senior R.C.M.P. officials and Ministers about Operation Ham, on which our comments in this chapter are based, is found in Volumes 84, 88, 90, 91, 114, 116, 126, 127 and C28 of the transcripts of the Commission's hearings.

Summary of facts

3. The Honourable Warren Allmand was Solicitor General at the time Operation Ham was carried out in January 1973, and he left the portfolio in September 1976. He testified that he did not know of Operation Ham until it was revealed by his successor, Mr. Fox, in November 1977.
4. Mr. Higgitt was Commissioner of the R.C.M.P. from October 1969 until his retirement in December 1973. His evidence was that he had no knowledge of Operation Ham until the evidence concerning the operation was disclosed publicly by Mr. Fox.
5. Mr. Starnes, who was the Director General of the Security Service at the time of Operation Ham and authorized it, testified that he did not inform Mr. Allmand about it. He explained "that to do so would have given a political flavour to the operation" and that therefore he "had good reason not to inform the Minister". He says that he informed neither the Commissioner of the R.C.M.P. nor any other senior officials. He told us that "... to have involved Ministers or to have involved persons outside the Security Service in the decision about Operation Ham, ... would not have been a proper thing to do".
6. Mr. Dare, who succeeded Mr. Starnes as Director General of the Security Service on May 1, 1973, was aware of Operation Ham at least as early as August 19, 1974, when he received the Samson "Damage Report". He testified that he "did not perceive Ham to be illegal". He said that he did not disclose the Operation to any Solicitor General until October 31, 1977, when he did so

to Mr. Fox. As to the reasons that he did not advise Mr. Fox about Operation Ham earlier than he did, Mr. Dare said: "[It was] . . . well known to the persons in charge, the Commissioner of the day and my predecessor, and I did not see it as my responsibility to re-open decisions of my predecessor or, indeed, throw anything in a disparaging way on decisions of the Commissioner of the day". It is not clear whether, in saying that the operation was ". . . well known to . . . the Commissioner of the day...", he was referring to Commissioner Higgitt, who was the Commissioner when the operation took place or to Commissioner Nadon, who was the Commissioner at the time that Mr. Dare learned of the operation in 1974 and remained Commissioner until September 1977.

7. We have indicated above that Mr. Higgitt's testimony was that he did not become aware of the operation until it was disclosed publicly by Mr. Fox. Mr. Nadon testified that he did not know about the operation until after he retired from the R.C.M.P. in 1977. However, Mr. Nadon testified that the Samson Damage Report was discussed with him by Mr. Dare in August 1974 and as noted above, that report makes reference to Operation Ham.

8. It is clear that Mr. Starnes authorized the operation and was aware of its execution and that he did not advise either Commissioner Higgitt or Mr. Allmand about it. It is also clear that Mr. Dare became aware of the operation at least as early as August 1974 and that he did not notify Mr. Allmand; nor, until December 31, 1977, did he notify Mr. Fox, who had become Solicitor General in September 1976.

Conclusions

9. We do not consider acceptable Mr. Starnes' reasons for not disclosing the operation to his Minister, Mr. Allmand. For reasons which we expressed in Part III, Chapter 1, of our Second Report, in our opinion it is not proper to withhold information from a Minister on the ground that it might place him in an untenable position. Nor do we consider that to advise the Minister would "have given a political flavour to the operation". If, in the opinion of Mr. Starnes, the operation was an appropriate one to be undertaken by the Security Service and, if discovered, it was liable to create serious difficulties for the government, then it was precisely the sort of operation which he ought to have discussed with Mr. Allmand in advance.

10. We also find unacceptable Mr. Dare's explanation for his failure to notify Mr. Allmand and then Mr. Fox. Whether or not Mr. Nadon was fully aware of the operation was irrelevant. Mr. Dare had a direct relationship with the Minister and could have exercised his right to speak directly to the Minister. Also, his view that he had no responsibility ". . . to re-open decisions of [his] predecessor..." is, as we pointed out in Chapter 1 of this Part, also unacceptable, for it would excuse any person occupying a position from bringing to the attention of his superior, any wrongdoing committed by a predecessor. Mr. Dare's evidence that he did not consider Operation Ham to be illegal is, as we also pointed out in Chapter 1 of this Part, impossible to reconcile with his testimony that he considered surreptitious entries to search, prior to July 1, 1974, to be illegal. Our conclusion is that Mr. Dare did not give consideration

to the legality of the operation but that he was aware of its details and its extreme sensitivity in a political sense. While it may be argued that under those circumstances he had no duty to report the matter to the Minister, nevertheless it does appear that it amounted to bad judgment on his part not to have done so. This conclusion may have the benefit of hindsight but we are concerned about what appears to be an attitude shared by Mr. Dare that matters of delicate sensitivity ought not to be disclosed to the Solicitor General.

CHAPTER 6

THE KEELER MAIL INCIDENT

Introduction

1. We examine in this chapter an incident having to do with an article of mail. The incident occurred in 1973, and resulted in an exchange of correspondence between a member of Parliament and the Solicitor General. Those who testified with respect to this matter were the Honourable Warren Allmand, Commissioner W.L. Higgitt, Commissioner M.J. Nadon, Mr. Roger Tassé, Mr. M.R. Dare, Mr. R. Bourne and Inspector J. Warren. The testimony relating to this matter is found in Vols. 88, 89, 116, 125, 129, 140, 156 and 159. In addition, one of the participants made representations to us as a consequence of a notice served pursuant to section 13 of the Inquiries Act (Vol. C122).

Summary of facts

2. On November 15, 1973, a constituent of Mr. Allan Lawrence, M.P., Mr. Wally Keeler, wrote to him complaining that a "piece of mail" addressed to Keeler by a friend had come into the possession of the "Internal Security Division of the R.C.M.P." and had never been delivered. Mr. Keeler and his friend addressed correspondence to each other by their social insurance numbers and the mail in question was addressed to Mr. Keeler as follows:

Langtek
422-902-510
Apt. 5
(118)
K9A 1N7

Mr. Keeler said that his friend had been interviewed on November 8, 1973, by two members of the R.C.M.P. with respect to the item of mail. According to Mr. Keeler, they told his friend that they had traced the Social Insurance Numbers. His friend saw a photocopy of the piece of mail in the possession of the R.C.M.P. members.

3. The piece of mail was a plasticized computer card. According to Mr. Keeler's letter, the R.C.M.P. told his friend that the item had been "brought to them". Mr. Keeler told Mr. Lawrence that the incident made him "fearful" for his "civil rights".

4. On November 21, 1973, Mr. Lawrence wrote to the Honourable Warren Allmand, the Solicitor General, enclosing a copy of Mr. Keeler's letter and asking Mr. Allmand to investigate Mr. Keeler's allegation of unjustified

interception of his mail by the R.C.M.P. and the photocopying of it, plus their preventing it from reaching him. Mr. Lawrence's letter was received by Mr. Allmand on the following day.

5. On November 27, 1973, the Keeler and Lawrence letters were referred to the R.C.M.P. for preparation of a draft reply for the signature of Mr. Allmand. Sergeant J.S. Warren of the Security Service was asked to investigate and prepare a reply.

6. Mr. Warren testified that he examined the Security Service file and found that it contained the plasticized computer card through which a hole had been punched by the R.C.M.P. so that the card could be placed on a spike. The card did not have a postage stamp on it. The R.C.M.P. file contained an R.C.M.P. report which showed that the investigation had been initiated when the card was sent to the R.C.M.P. by the Department of National Defence on July 24, 1973. Also in the file was a transmittal slip of Canada Post, addressed to the Department of National Defence, on which there was noted the message "found loose in mail stream at Alta Vista Terminal and returned to you". Mr. Warren said that he spoke to the R.C.M.P. corporal who had written the letter to the field to request the investigation in the first place.

7. Mr. Warren then drafted a letter for the signature of Mr. Allmand, which he said was probably the precise form of the reply sent on December 4, 1973, from Mr. Allmand to Mr. Lawrence. He testified that at the same time he also probably drafted a letter from Mr. Dare, the Director General of the Security Service, to Mr. Allmand's Special Assistant, transmitting the draft reply, and briefly explaining the R.C.M.P.'s involvement in the matter. Mr. Warren's two draft letters reached the desk of Mr. Dare who testified that he reviewed the proposed response to Mr. Lawrence with the officer who had brought the drafts, then signed the one for his signature and sent them to Mr. Allmand. Mr. Dare said he accepted the assurance given to him by that officer that the reply was an accurate statement of fact. In the hierarchy of the Security Service at that time, according to Mr. Warren, there were at least four people between himself and Mr. Dare. There is no evidence whether all or any of these four saw or read the draft letters. When Mr. Allmand received the letters he signed the one to Mr. Lawrence, and sent it to Mr. Lawrence on December 7, 1973. Mr. Warren testified that the computer card was returned to the post office on the same date that the letters were sent to Mr. Allmand.

8. The letter from Mr. Allmand to Mr. Lawrence describes the circumstances surrounding the receipt of the card by the R.C.M.P. and the results of their investigation of the matter. It sets out, in full, the text of the communication typed on the card. The concluding paragraph of the letter reads:

I have been assured by the R.C.M.P. that it is not their practice to intercept the private mail of anyone and I trust that the above explanation will set your constituent's mind at ease.

9. Our primary concern with this incident is not whether what the R.C.M.P. did in the course of the investigation was proper, i.e., whether they should have retained the card for as long as they did, or whether they should have traced

the sender of the letter through his social insurance number, or even whether they should have disclosed, in the letter they drafted for Mr. Allmand to send to Mr. Lawrence, the contents of the communication contained in the card. Our main concern is whether the contents of the last paragraph of the letter from Mr. Allmand to Mr. Lawrence, quoted above, were a misrepresentation by the R.C.M.P. to their Minister, the Solicitor General, with respect to mail opening by the Force, the consequence of which would be a misrepresentation by the Solicitor General to an opposition M.P. and one of the latter's constituents. We are further concerned whether, if there was such a misrepresentation, there was an intention on the part of the Force to mislead the Solicitor General and through him others, or whether the conduct of the Force showed such a careless disregard of consequences that it is subject to reproach.

10. At the time that he drafted the letter Mr. Warren had been in the R.C.M.P. for over 13 years and in the Security Service for over 9 of those years. He graduated from university in 1969 with a B.A. degree in political science. Mr. Warren testified that in using the words "it is not their practice to intercept the private mail of anyone" he did not intend that they convey the meaning that mail was not opened by the R.C.M.P.

11. Mr. Warren said that he did not intend anything to depend on the use of the word "practice" in the sense that a certain number of occurrences would have to take place before it could be said to be a "practice". Mr. Warren further said that in his understanding the word "intercepting" means "to have seized, to have held, to hold, to divert from its intended recipient". He told us that he used the word "intercept" because it was the word used by Mr. Lawrence in his letter. He said he believed that the question that was being addressed was the holding of the mail" and that in replying he meant to tell the reader of the words, "I have been assured by the R.C.M.P. it is not their practice to intercept the private mail of anyone",

that the R.C.M.P. did not make a habit of taking someone's property, putting it on our file, punching a hole through it, and keeping it on our file for some months; that when an investigation had shown something belonged to someone else, it was returned to them, and that it was not our practice to put it on the file and hold it on the file.

12. Mr. Warren told us that he was aware in November and December 1973 that the Security Service used, as one of its investigative techniques, the opening of other people's mail without their knowledge or consent, and he assumed that that technique had been in use. Mr. Warren said that he was not aware of mail opening by the C.I.B. side of the Force, nor was he aware of whether the Post Office Act prohibited or permitted mail opening.

13. Mr. Warren testified that the letter which he drafted from Mr. Allmand to Mr. Lawrence was not deliberately and intentionally misleading nor did he know that Mr. Lawrence would be misled. Mr. Warren said that he did not consider that Cathedral A, B and C operations of the Security Service, which included examining mail covers and mail openings, constituted an "interception" of the mails.

14. Mr. Dare became Director General of the Security Service on May 1, 1973. He said he first became aware of Cathedral A, B and C operations, as techniques, in late 1973 or early 1974 and was also aware that all such operations had been ordered suspended on June 22, 1973. He said that he would not have condoned or approved mail opening, which he considered to be illegal. When he forwarded the draft letter to Mr. Allmand for his signature, in using the words "I have been assured by the R.C.M.P. that it is not their practice to intercept the private mail of anyone" he said he meant to convey the meaning that it was not the practice of the R.C.M.P. "to open the private mail of anyone". Mr. Dare said he had forwarded the letter before learning of Cathedral A, B and C operations and of their suspension. Mr. Dare said that if he had been aware that any mail openings had occurred before his draft letter to Mr. Allmand, even if they had been prior to the suspension date of June 22, 1973, he would not have written the letter in the same language and he would have advised the Minister. Mr. Dare stated that he first became aware of an actual mail opening operation in July 1976.

15. Commissioner Nadon, in December 1973, was the Deputy Commissioner (Criminal Operations), of the Force. He said that on the C.I.B. side of the Force, as of December 1973 the R.C.M.P. was intercepting mail. He recognized that the letter sent to Mr. Allmand and then to Mr. Lawrence could mislead the Minister and Mr. Lawrence.

16. Commissioner Higgitt, who was Commissioner of the R.C.M.P. in December 1973, said that the letter was accurate because there were not enough instances of interceptions by the R.C.M.P. to constitute a "practice". We note that this was not an explanation advanced by Mr. Warren, the author of the letter.

17. Mr. Allmand, the Solicitor General, told us that when he received the draft letter he understood the word "interception" to mean "to open or to keep mail". He said that he had been told by the R.C.M.P. that they did not open mail and the statement in the draft letter to Mr. Lawrence confirmed that for him. He added that he understood the words "not their practice to intercept" to mean that they did not intercept and that he considered the card in question to be "private mail".

18. Mr. Allmand says that he was told by the R.C.M.P. on several occasions that they did not open mail and that he remembers discussing this particular matter of the Keeler complaint with the senior officers of the R.C.M.P. at one of the regular weekly meetings that he had with them.

19. Mr. Allmand's recollection is confirmed by the testimony of Mr. Roger Tassé, the Deputy Solicitor General, and Mr. R. Bourne, the Assistant Deputy Solicitor General, both of whom attended the regular meetings between Mr. Allmand and the senior officers. Mr. Bourne said that he was aware that the R.C.M.P. were engaged in mail cover checks and he said that the language of the letter to Mr. Lawrence meant to him, Bourne, that the R.C.M.P. did not open mail.

20. Commissioner Higgitt testified that he has no recollection of having discussed Mr. Keeler's complaint with Mr. Allmand. He said that the letter to

Mr. Lawrence was "not an assurance to the Solicitor General at all and should not be taken as such". He said further that the letter "was not a method that the R.C.M.P. would have used to supply the Solicitor General with the information. That would have been done quite separately". He added,

that is not an assurance the RCMP is giving to the Minister at all, and as a matter of fact, the practice was in matters of this kind, the practice was very often Ministers' letters were not exactly drafted on precise statements of fact. The practice would be to explain the rule, to explain the whole circumstances to the Minister, and then say, 'Mr. Minister, here is a draft which we suggest you might find suitable to send to the complainant or whoever it might be'. That is such a letter.

21. Mr. Dare testified that Mr. Allmand did not enquire, at the time of the response to Mr. Lawrence, whether the Security Service opened mail. Mr. Dare said that Mr. Allmand "did not raise the issue".

Conclusions

22. In our opinion the letter from Mr. Allmand to Mr. Lawrence was false and misleading to the recipient. At the time that the letter was written it was in fact the "practice" of the R.C.M.P. "to intercept the private mail" of people. That is so whether or not the words "to intercept", in the particular circumstances, meant going as far as "to open" or simply meant "to stop in the mailstream". In our view, the normal meaning attributed to the word "intercept" in relation to mail would be the removal from the mailstream for any purpose unrelated to delivery of the mail and no matter what the duration of the removal. It is the act of interrupting the normal flow, whether to examine the names and addresses of the sender and the proposed recipient, or to examine the contents of the communication, either through opening the envelope or otherwise (with respect to a card, the two objectives would no doubt be combined because no opening is necessary). Employing this definition of "intercept", the language used in the letter could have misled Mr. Lawrence both as to the opening of mail and the examination of the exterior of envelopes. However, Mr. Warren thought that the word "interception" meant stopping something from getting through and he therefore did not intend to mislead Mr. Lawrence although he may have unwittingly done so. As for Mr. Dare, it is unclear that at the time the letter was sent to Mr. Allmand, Mr. Dare knew of either mail openings or the examination of the exteriors of envelopes. Consequently, it cannot be said that he intentionally contributed to the misleading of Mr. Lawrence. Turning to Mr. Allmand, the word "interception" was felt by him to mean mail opening; he did not know about mail opening and it cannot be said that he intended to mislead Mr. Lawrence.

23. There is some justification for Mr. Allmand's interpretation of "interception" because Mr. Lawrence's letter to him, immediately after mentioning "intercepting private mail", says "not only making photostatic copies of the correspondence, but also preventing the mail from reaching him". This, plus the fact that Mr. Keeler, in his letter to Mr. Lawrence, a copy of which accompanied Mr. Lawrence's letter to Mr. Allmand, speaks of a "letter" when referring to the card and also says that he had received mail previously "with

the above addresses on the envelope", makes it easy to see how Mr. Allmand could infer that the point in issue was mail *opening*. There is no doubt that in the context of dealing with this letter to Mr. Lawrence, Mr. Allmand sought and obtained assurances from senior R.C.M.P. officers at a meeting with them that the R.C.M.P. did not open mail. This is Mr. Allmand's recollection and it is confirmed by Mr. Tassé and Mr. Bourne. There is no evidence as to who gave that assurance.

24. Mr. Dare, in sending the draft letter to Mr. Allmand, and Mr. Allmand, upon receiving it, both understood and intended the last paragraph to convey the meaning that the R.C.M.P. did not open private mail.

25. We reject categorically Mr. Higgitt's view that the draft letter to Mr. Lawrence should not be taken as an assurance to the Solicitor General. To suggest that the Minister could not rely on such a statement in a draft letter presented to him for signature is also to suggest that the Minister should expect to be a party to deceiving the recipient of the letter. That suggestion is, of course, totally unacceptable.

26. When Mr. Dare became the Director General of the Security Service on May 1, 1973, there was a policy in place in the Security Service for conducting Cathedral operations, which included the opening of mail. On June 22, 1973 the Security Service suspended all Cathedral operations. Mr. Dare said that he was not aware of either the policy or its suspension, at the time he forwarded the draft letter to Mr. Allmand on December 4, 1973. Mr. Dare said he first became aware of Cathedral procedures A, B and C either sometime after December 4, 1973, or early in 1974. On August 19, 1974, Mr. Dare received the Samson Damage Report from the Deputy Director General (Operations), Mr. Draper. That report includes the following statement:

He would be aware of our CATHEDRAL capability (mail intercepts) but does not know our contact in this field and has never participated in one of these operations.

In spite of having been apprised earlier of the technique of mail opening and then reading the Damage Report in August 1974 which clearly talks about "mail intercepts" in the present tense, Mr. Dare did nothing to bring to the attention of Mr. Allmand that such a technique had been, or was still being, used by the Security Service.

27. Mr. Dare should have been informed of Cathedral operations long before December 4, 1973. That he was not so informed is a reflection of irresponsible conduct on the part of those who reported directly to him. When he eventually became aware of the Cathedral techniques he should immediately have advised Mr. Allmand so that the latter could have rectified the impression which both of them intended to leave, and no doubt did leave, with Mr. Lawrence.

28. Mr. Dare testified that he first became aware of an actual incident of mail opening by the Security Service in July 1976 when he was informed of one by the Deputy Director General (Operations) Mr. Sexsmith. Mr. Dare said that he has no specific recollection of being so informed by Mr. Sexsmith but he is prepared to take Mr. Sexsmith's word for it. Mr. Dare was sufficiently

confident that Mr. Sexsmith had so informed him that he advised the Chairman of the House of Commons Standing Committee on Justice and Legal Affairs that he wished to change previous testimony given to that Committee to the effect that he had not known about any specific acts of mail opening until early 1977. Mr. Dare testified that as late as 1976 Mr. Allmand had asked the senior officers of the Force whether mail was being opened by the R.C.M.P. and had been told that it was not. In July 1976, when he was informed of the mail opening incident by Mr. Sexsmith, he should have gone to Mr. Allmand immediately and advised him about it, but he allowed Mr. Allmand to continue in his belief that mail opening did not take place.

29. Mr. Warren said that he drafted the last clause of the letter to Mr. Lawrence with the intention that it be read in the context of the letter from Mr. Lawrence which spoke of interception - "not only making photostatic copies of the correspondence but also preventing the mail from reaching [Keeler]". Mr. Warren told us that for him "interruption" would be a more appropriate word to describe "mail opening", rather than "interception". We find such a distinction difficult to accept. However, even assuming that Mr. Warren's argument has some merit, in our view Mr. Warren was careless in his drafting of the last paragraph of the letter, if only because he was instructed to investigate, and drafted the letter in such a way as to speak for the entire R.C.M.P., yet made no inquiries of the C.I.B. as to what their practice was. We do not impute any intention on his part to deceive.

CHAPTER 7

PRESENCE OF SECURITY SERVICE SOURCE AT A MEETING WITH THE HONOURABLE WARREN ALLMAND AND TAPING OF THE CONVERSATION

Introduction

1. This chapter deals with the attendance of a Security Service source, Mr. Warren Hart, at a meeting between the Honourable Warren Allmand, when he was the Solicitor General, and Mr. Roosevelt Douglas. It also considers the tape recording by Mr. Hart of the conversation at that meeting.
2. Those who testified at the hearings were the Honourable Warren Allmand, Mr. M.R.J. Dare, Assistant Commissioner H. Draper (ret.), Chief Supt. G. Begalki, Ex-Staff Sgt. J.R. Plummer, Sgt. W.A. McMorrان and Mr. W. Hart.
3. Public testimony was heard on April 4 and 5, 1979 and January 8, 9, 10 and 16, and April 23, 24 and 29, 1980. That testimony is found in Volumes 116, 117, 143-145, 151, 179, 180 and 182. *In camera* testimony was heard on January 17, April 30, October 9 and October 30, 1980 and is found in Volumes C75, C92, C110 and C113. In addition, one of the participants made representations to us on March 25, 1981, in response to a notice served on him pursuant to the provisions of section 13 of the Inquiries Act. Those representations are found in Vol. C126.

Summary of facts

4. In November and December 1974, Mr. Warren Hart was a paid informant of the R.C.M.P. Security Service. At that time Mr. Hart was acting as a bodyguard for Mr. Roosevelt (Rosie) Douglas who had recently been released from prison and was on parole. Mr. Douglas was a target of the Security Service.
5. In a letter dated November 21, 1974 (Ex. QC-4), Mr. H.C. Draper, Deputy Director General (Operations), reported to the Solicitor General the current activities of Mr. Douglas. In a telex dated November 28 (Ex. QC-4), to Mr. Robin Bourne, the Assistant Deputy Solicitor General, the Security Service advised that it had learned that Mr. Allmand had an appointment with Mr. Douglas on December 2, 1974, that Mr. Allmand had asked Mr. Douglas to prepare a report on prison reform, and that the Security Service was concerned that any government support of Mr. Douglas would "only serve to

legitimize his presence in Canada". On that same date, Mr. Bourne, in a note to the Deputy Solicitor General, Mr. Tassé, stated that *Contrast*, a "black magazine", had recently reported that Mr. Douglas was preparing a report on prison conditions. Mr. Bourne asked Mr. Tassé to clarify for the Security Service whether there was "any official blessing by the Minister" of preparation of the report by Mr. Douglas. A note dated November 29, 1974, from Mr. Bourne to the Director General of the Security Service advised that the telex information was essentially true except that Mr. Allmand had not asked Mr. Douglas to prepare the report: Mr. Douglas had approached Mr. Allmand and told him that he was preparing such a report and Mr. Allmand had asked to see it. Mr. Bourne confirmed that Mr. Douglas did have an appointment with Mr. Allmand.

6. The Security Service had learned, at least as early as November 22, 1974, that Mr. Douglas had an appointment with Mr. Allmand on December 2. The evidence is conflicting as to how the Security Service came into possession of that information. Mr. Hart testified that the Security Service had obtained it tapping Mr. Douglas' telephone. Mr. Hart's handlers in the Security Service, Sgt. Plummer and Corp. McMorrان, said that they got the information from Mr. Hart. However, those handlers also testified that they might have learned of the meeting through a telephone tap.

7. There is also a discrepancy as to when the meeting was held between Mr. Hart and his handlers, Mr. Plummer and Mr. McMorrان, at which the first exchange of information took place about the proposed meeting between Mr. Allmand and Mr. Douglas. Mr. McMorrان said that the meeting occurred on November 22, 1974. Mr. Hart testified that it was held 48 hours before the meeting between Mr. Allmand and Mr. Douglas, which would have placed it on November 30.

8. At that meeting between Mr. Hart and Messrs. Plummer and McMorrان there was a discussion about the possibility that at the meeting on December 2, Mr. Allmand might offer Mr. Douglas employment. Mr. Hart told us that Mr. Plummer said "I bet the S.O.B. will offer Douglas a job." Mr. Plummer testified that it is possible that he did say that. Mr. Plummer testified that either Mr. Hart told them or they learned through other sources about the possibility of a job offer by Mr. Allmand to Mr. Douglas. Mr. McMorrان said that Mr. Hart told them about the job offer.

9. There is also conflicting evidence as to what was said at the meeting when Messrs. Hart, Plummer and McMorrان first discussed taping the Allmand-Douglas meeting. Both Mr. Plummer and Mr. McMorrان believed that it was Mr. Hart who raised the question as to whether he should tape the December 2 meeting, but Mr. Hart said that at the meeting either Mr. Plummer or Mr. McMorrان said "should we tape the bastard?" It is the evidence of Messrs. Plummer and McMorrان that when the question of taping was raised Mr. Plummer left the meeting and phoned the "Black Power desk" at Headquarters in Ottawa to seek instructions on that question. Mr. Plummer could not recall with whom he spoke at Headquarters. According to Mr. McMorrان, they were concerned about taping Mr. Allmand because he was the head of

their Department. Mr. Plummer testified that the instructions that he received from Headquarters were that it was all right for Mr. Hart to attend the meeting but that the Allmand-Douglas conversation was not to be taped. He said he returned to the hotel room and advised Mr. Hart of that. Mr. McMorrان said that when Mr. Plummer came back from making the telephone call to Headquarters he, Plummer, said that he had been in contact with Headquarters and that they had advised that they were not to tape the Allmand-Douglas meeting. Mr. McMorrان also testified that he thinks that Mr. Plummer also said that Headquarters had no objection to the source attending the meeting.

10. Mr. Hart told us that when he first learned about the Allmand-Douglas meeting from the R.C.M.P. contact, he understood that the sole purpose of that meeting was to discuss the pamphlet that Mr. Douglas had written. He said that it was his understanding that Mr. Allmand had called Mr. Douglas and wanted to see him to discuss the pamphlet. The purpose of his discussion with Messrs. Plummer and McMorrان, according to Mr. Hart, was to arrange for him, Mr. Hart, to go to Montreal with Mr. Douglas. Mr. Hart testified that the only point of discussion was whether or not Mr. Allmand should be taped, that the stated reason given for taping the conversation was that Messrs. Plummer and McMorrان thought that Mr. Allmand would offer Mr. Douglas a job, and that Messrs. Plummer and McMorrان indicated that they would have to get instructions on the matter. He testified that the three of them met the following day at another hotel where he was given a body pack. However, later in his evidence Mr. Hart testified that at the first meeting he was told to tape the conversation between Mr. Allmand and Mr. Douglas, and he denied that he had received specific instructions not to tape Mr. Allmand. Mr. McMorrان said that he thinks that both he and Mr. Plummer reinforced the instructions to Mr. Hart that he was not to tape the Allmand-Douglas meeting.

11. Both Mr. Plummer and Mr. McMorrان made it clear to us that they were interested in whether Mr. Allmand would offer Mr. Douglas a job. Mr. McMorrان said he would have to assume that Headquarters was interested in that question also. Mr. Plummer said that the possible job offer would have been a part of the conversation he had with Headquarters when he checked to see whether the meeting should be taped. He also told us that it is possible that his superior told him that he, the superior, was similarly disturbed that Mr. Allmand might offer a job to Mr. Douglas. Mr. McMorrان said that his concern about the job offer was one which was identified by his superiors and not him, personally.

12. Mr. Hart testified that both Mr. Plummer and Mr. McMorrان expressed to him at the first meeting their opinion about Mr. Allmand. He said they talked about Mr. Allmand having leftist tendencies, being a Red, being a Communist and being against the R.C.M.P. He said it was suggested to him that they were taping Mr. Allmand because he was a Communist. Mr. Plummer denied any discussion to the effect that Mr. Allmand was a Communist but admitted that he may have made a comment that Mr. Allmand had socialist tendencies.

13. Chief Supt. Begalki testified that he knew that a meeting was planned between Mr. Allmand and Mr. Douglas and that he was involved in discussions with Mr. Draper which led to the recommendation that Mr. Allmand should not meet with Mr. Douglas. They felt that Mr. Douglas would exploit the meeting and turn it to his own advantage since he was under a deportation order or still appealing the charges in relation to the destruction of the Sir George Williams University computer. He said they saw considerable conflict in having one Minister trying to rid the country of an individual and another Minister intending to meet with him, ostensibly to offer employment. He told us he was not aware whether Mr. Draper or the Commissioner or the Director General were successful in persuading Mr. Allmand not to meet with Mr. Douglas. He told us that he thinks that he understood in advance that what was anticipated was that Mr. Allmand would be offering a job to Mr. Douglas and that it was not as if Mr. Douglas was going to solicit a job. He said that was a factor that led to the decision to recommend to Mr. Allmand that he not attend the meeting. He said that Mr. Bourne or the Director General clarified with Mr. Allmand their understanding that the Minister might be offering Mr. Douglas a job. He testified that the reason that there is the mention in the telex of December 2, 1974, that "there is no indication that Douglas will be considered for employment by the Solicitor General nor has he been looked at in an advisory role" is that the matter was raised by the Deputy Minister with Mr. Allmand as a result of the handwritten note of Mr. Bourne to the Deputy.

14. Assistant Commissioner Howard Draper said that he had heard from Mr. Begalki that Mr. Allmand would be meeting with Mr. Douglas but he has no recollection of being consulted about Mr. Hart's attendance at it. Mr. Draper said he is not clear whether he knew about the job offer before the meeting or afterwards. He told us that his advance knowledge about the meeting might have come from someone within the Ministry or through normal Security Service channels. He said he found it difficult to understand why a Minister would want to meet with someone "that the government of the day had [the Security Service] investigating fairly vigorously".

15. Mr. Dare told us that he was not consulted about Mr. Hart's attendance at the meeting nor was he aware that Mr. Hart was going to attend. He said that he thinks that he was aware, from a general conversation with the Minister, that the Minister was going to meet Mr. Douglas. Mr. Dare said that the concern of the Security Service about the meeting was whether Mr. Allmand was being "taken in" by certain persons in the Black movement.

16. Mr. Hart testified that he does not recall any other meetings that were planned in Montreal by Mr. Douglas and that the meeting with Mr. Allmand was the only meeting that Mr. Douglas had. Later, Mr. Hart testified that he did not recall whether Mr. Douglas was scheduled to speak in Montreal that weekend at other meetings and that it was quite possible that he was. Mr. McMorran told us that he learned from Mr. Hart of the date that Mr. Douglas and Mr. Hart planned to go to Montreal and about one of the meetings that they planned to cover in Montreal prior to meeting with Mr. Allmand. Mr. McMorran said that Mr. Douglas and Mr. Hart had a meeting in Montreal with the Haitian committee and a meeting with a Dominican group, one of the

meetings being on Saturday, November 30, and the other Sunday, December 1, and that there was a further meeting with a small group of people in a house. Mr. McMorran said that he, himself, went to Montreal and saw Mr. Hart either Saturday night, November 30, or Sunday night, December 1, to debrief him with respect to these meetings. He said he did not see Mr. Hart on December 2. Mr. McMorran said that at the meeting with Mr. Hart on December 1, he reinforced the instruction that Mr. Hart was not to tape the Allmand-Douglas conversation. He said he believes he did that because Hart was still in possession of the body pack. He said he did not get the body pack from Mr. Hart on December 1, because Mr. Hart did not bring it with him to the meeting and he felt that in this particular instance Mr. Hart would follow instructions.

17. Mr. Hart said that no meeting with any other person was arranged or scheduled in advance of going to Montreal on the occasion when Mr. Douglas went there to meet Mr. Allmand. When asked whether he reported to the R.C.M.P. members that Mr. Douglas intended to meet with different people at Dawson College and at McGill University he replied: "Not to my knowledge, no". He said that he does not recall a meeting at Dawson College at which people from Dominica and people from Haiti were present during that same visit to Montreal that they saw Mr. Allmand, and he added that it is possible that Mr. Douglas could have talked to one or two people but he does not remember.

18. Mr. Hart testified that he attended the meeting on December 2, between Mr. Allmand and Mr. Douglas, which lasted from 45 to 48 minutes; the subject of discussion was prison reform, except for the offer of a job made by Mr. Allmand after he had looked through the pamphlet that Mr. Douglas had written. Mr. Hart said that he taped the whole meeting between Mr. Allmand and Mr. Douglas. He thinks that he and Mr. Douglas returned to Toronto the day following their meeting with Mr. Allmand. Messrs. Hart, Plummer and McMorran all testified that shortly after Mr. Hart's return from Montreal on December 3, the three of them met at a Toronto hotel and Mr. Hart told them that he had taped the Allmand-Douglas meeting.

19. Mr. Hart said that when he was given the body pack tape recorder by his R.C.M.P. handlers it was understood that he would record the conversation between Mr. Allmand and Mr. Douglas and anything else as long as he had tape. He said that he was expected, in any event, quite apart from the tape recording, to report back to his handlers on what was said between Mr. Allmand and Mr. Douglas. He said that when he returned and met with Messrs. Plummer and McMorran at the hotel he told them he had accomplished his job, and that he and Messrs. Plummer and McMorran met most of the day and discussed the taping. He said that he and Mr. Plummer listened, with earphones, to a cassette, which was not the original tape on the spool from the body pack tape recorder, and he thought that Mr. McMorran also listened to it. He said that the first recording on the tape was where Mr. Allmand offered a job to Mr. Douglas and that he listened to that. He said that when listening to the tape Mr. Plummer said "the S.O.B. did offer him a job". Mr. Plummer denied that he made such a statement because, he said, his listening

to the tape did not lead him to believe that the job offer had been made. Mr. Hart testified that he taped the whole meeting between Mr. Allmand and Mr. Douglas and he was never told that parts of the tape were erased or non-existent. Mr. McMorran said that at the meeting with Mr. Hart, Mr. Hart said: "I did tape Mr. Allmand and he offered Mr. Douglas a job" and that, when he said to Mr. Hart "you are on specific instructions not to do this", Mr. Hart's reaction was "I had the opportunity. Why not?"

20. Mr. Plummer said that when Mr. Hart produced the tape at the meeting he, Plummer, examined it very briefly with an earphone set to make sure that there was conversation on it and that there was. He said that he took the tape back to head office and transcribed it onto another tape recorder there and then listened to that tape. Mr. McMorran testified that it was a rare exception that Mr. Plummer had with him the equipment to plug in to listen to the tape recorder and that he thinks that this might have been an isolated case. He said that he would have to assume that Mr. Plummer just happened to have the equipment there that day because Mr. Plummer did not know prior to the meeting with Mr. Hart that Mr. Hart had taped the Allmand-Douglas conversation. Mr. Hart testified that the machine on which they listened to the tape was a large Bell and Howell tape machine into which you could plug earphones and that they listened through earphones so that it could not be heard in the next room in the hotel.

21. Mr. Plummer said that he listened to the entire tape and either the first or second part was not complete. He said the part about the offer of employment was not on the tape but that he did not recheck with the original tape to see if something had been missed in copying. He said that the tape ran out and that the tape that he listened to did not cover the whole conversation between Messrs. Allmand and Douglas. He said that all that Mr. Hart said about the meeting was that the job was offered to Douglas and they naturally wanted to confirm that from the tape recording.

22. Mr. McMorran said that after the tape was transcribed onto the cassette he and Mr. Plummer listened to it. The only part that he can recall was missing from the tape was at the very end when the tape ran out. He said that there were other meetings recorded on the tape and that the meeting with Mr. Allmand was the last item on the tape. He said it was obvious to him that there was something else going on after the tape was finished but that the tape had run out and the conversation was not finished.

23. Mr. McMorran testified that Mr. Plummer told him that he had made a telephone call to Headquarters and advised Headquarters that there was no job offer on the tape. Mr. McMorran said that they received instructions from Headquarters not to send the tape to Headquarters, not to debrief the tape in writing, and to refer in a report only to what the source said and not to the tape. He said it was made very clear to them that no written reference should be made to the taping of Mr. Allmand. He said that when they listened to the tape he does not know whether at that point a call had been made to Headquarters. He said that after instructions were received from Ottawa and the displeasure expressed concerning the existence of the tape, they "erased"

the second tape and that the first tape had been "erased" by the section that looked after the equipment. Mr. Plummer did not remember whether he was "ordered to destroy" the tape or whether he "destroyed" it on his own initiative but he agreed that in an earlier statement he had indicated that he had been instructed "to destroy" the tape. He said that none of his superiors in the Security Service chastised him for the fact that the tape had been made or for listening to it after it was brought to him.

24. Mr. Draper said that he had not anticipated that Mr. Hart, whom he regarded as a bodyguard, would be present at the meeting between Mr. Allmand and Mr. Douglas. He said he was "furious" that Mr. Hart had attended the meeting, but mostly that the meeting had been taped, and he instructed Mr. Begalki to ensure that the tape was secured and destroyed immediately and that no copies were made. He said his instructions were also that there were to be no references on file to taping and he made it clear to Mr. Begalki that anything in writing covering the incident should omit the fact that the taping had taken place. He said Mr. Begalki replied that he had given instructions that there was to be no taping. Mr. Draper said that he did not want the tape to be transcribed because copies have an unhappy way of being distributed. He said he felt it was a "ridiculous situation" and should not have happened in the first place and should not be spread about because the Minister "did not deserve that". He said it seemed to him that, "having made this social error", the Security Service must confine it to the narrowest circle. He also told us that in ordering that there be no reference to the taping in the files, his intention was not to hide the fact of the taping from anybody looking in the files "... as much as the possibility of somebody taking something out of context and a sentence or two out of a tape".

25. Mr. Plummer testified that either he or Mr. McMorran made a written report that Mr. Allmand had made a job offer to Mr. Douglas. On the other hand, Mr. McMorran testified that after listening to the tape and learning what was on it they advised Headquarters that there was no job offer on the tape. This is confirmed to some extent by a telex dated January 15, 1975, in which Mr. McMorran reported to Headquarters what had been discussed between Mr. Allmand and Mr. Douglas at the meeting of December 2. The report states in part:

Towards the end of the conversation, Allmand asked Douglas if he had ever considered working for the Federal Government. Douglas replied that the Solicitor General and the Government considered him a risk to National Security. Allmand stated that he was willing to reconsider his position on that and that he could take care of that area.

The telex indicates that the information in it had been received from a "reliable source" on December 7, 1974. The telex also indicates that on January 14, 1975, "a reliable source" advised of a further appointment which Mr. Douglas was to have with Mr. Allmand during February 1975 and that Mr. Douglas had said that he was "seriously considering accepting Allmand's offer". The telex added that further information was being compiled by "E" Services Section and would be made the subject of an additional report. On this telex, there is a handwritten note, dated January 22, 1975, from Mr. Dare

to the "DDG Ops" which states "Discussed with the Minister this date P.A.". (We understand that "P.A." means "Put Away", which is simply a direction to file the document without further action being taken).

26. In a telex dated December 2, 1974, from Security Service Headquarters to Montreal, Toronto and Ottawa, Headquarters advised that Mr. Allmand had not asked Mr. Douglas to prepare a report and that, in fact, Mr. Douglas had approached Mr. Allmand and told him he was preparing a report which Mr. Allmand asked to see. It also advised that Mr. Douglas had an appointment to see Mr. Allmand that day. It added further that there was no indication that Mr. Douglas would be considered for employment or in an advisory role by Mr. Allmand. Mr. McMorran said that he reported to Headquarters his concern that the Solicitor General might experience embarrassment if he offered Mr. Douglas a job but did not get any follow-up on his report. Mr. Plummer told us that he reported to Headquarters that Mr. Hart had taped the conversation and that he had listened to the tape but he does not remember whether he reported it verbally or otherwise. He also told us that there was no written report about the taping: it was discussed verbally but he did not consider it significant enough to report on paper. Mr. McMorran's written report to Headquarters, dated January 15, 1975, relating the substance of the Allmand-Douglas meeting did not refer to the taping. Mr. Plummer said there was no need for the report to say that the conversation had been taped because Mr. Hart carried a body pack with him everywhere he went and they did not have to report that their information came from the body pack.

27. Mr. Begalki testified that he was in Mr. Draper's office when Headquarters received word that Mr. Allmand's conversation had been taped. Mr. Draper immediately exhibited his displeasure and contacted someone in Toronto to say that the handlers were to meet with the source, recover the tape and destroy it as quickly as possible so that Mr. Hart could not duplicate it and use it for any other purpose. It was their understanding that the tape was still in the hands of the source. Mr. Begalki said that the instructions were given and Mr. Draper asked that he be notified when his instructions had been carried out. He said he cannot recall any instructions being given to report on the meeting but not to refer to the taping, nor did he know that a duplicate tape had been made until he heard Mr. Plummer's testimony. Mr. Plummer testified that between the Allmand-Douglas meeting on December 2, 1974, and the date of Mr. McMorran's report of January 15, 1975, he was in touch with his superiors every day and probably would have told them that he had a tape. He said he does not recall receiving any instructions from his superiors as to whether the tape should be destroyed or kept. He said he does not recall whether anybody gave instructions about what to do with the tape and that he did not consider the tape of any importance.

28. According to Mr. Plummer it may have been indicated to him in his telephone conversation with Headquarters that it would not be proper for Mr. Hart to listen in on the conversation of the Solicitor General with Mr. Douglas. He said he cannot recall anyone saying that Mr. Hart could not be present at the meeting. He recalls that he was told that Mr. Hart was not to use a tape recorder but not that Mr. Hart was not to be there. Mr. Plummer said it never

crossed his mind that there was a question as to whether the R.C.M.P. should have a source at a meeting. He said that he called the Black Power desk at Headquarters, quite likely to ensure that Mr. Allmand would be made aware that Mr. Douglas was going to take him up on his offer of a meeting, and that part of the reason for phoning was to get authority for Mr. Hart to tape the meeting. He said the response was that it was all right for Mr. Hart to go but he was not to tape the conversation.

29. Mr. Begalki told us that he could not recall whether he was told that Mr. Hart was intending to accompany Mr. Douglas to the meeting. Later, Mr. Begalki told us: "The fact that the Division had raised the question of whether Hart should carry a pack and tape a meeting, the probability of him being invited was always there, even though it might have been an extremely long shot". Mr. Begalki denied that he authorized Mr. Hart to attend the meeting or that he instructed anyone to authorize him to do so. He also told us that he gave no instructions that Mr. Hart should do his utmost to avoid being present at the meeting. He did recall that there were instructions to the Division that there was to be no taping if Mr. Hart did go in to the meeting. He decided that if Mr. Hart was present there would be an independent source to corroborate Mr. Allmand's explanation of what took place. He said that he does not believe any consideration was given to notifying Mr. Allmand that the person who was accompanying Mr. Douglas was a source, because it has been "Force policy through six Solicitors General" that the Ministry did not want such information in the Ministry Office "because of the turnover of personnel" in that office and the consequent risk of disclosure about undercover operatives working for the Force.

30. Mr. Plummer told us that Mr. Hart had a body pack "practically on a permanent basis". He said that Mr. Hart was urged to use the recorder whenever it was convenient, so that there would be some corroboration of his information and for that reason Mr. Hart was never without the recorder. Mr. Hart said that the instructions given to him were to tape anything Mr. Douglas was doing.

31. Mr. Hart said that the R.C.M.P. handlers knew that he did not intend to tell Mr. Allmand that the conversation was being taped. He said that he met Mr. Allmand "later on" (by which he must have meant December 1975), and told him that he had been taped.

32. Mr. Allmand told us that he had met Mr. Douglas while Mr. Douglas was in prison, and that Mr. Douglas had expressed a desire to speak to Mr. Allmand when he got out on parole as he had written a treatise about prison conditions and reform of prisons. Mr. Allmand said that after Mr. Douglas' release, Mr. Douglas arranged an appointment to see him at his office, and that two other black people were present at that meeting. According to Mr. Allmand he took the paper that Mr. Douglas had prepared and told him that he would read it. He said that Mr. Douglas indicated that "he was interested in working with Corrections" and he told Mr. Douglas that there were "bars against ex-inmates in certain areas of the correction system" but that he, Allmand, was "in the process of changing the system" so that "ex-inmates

could work in certain areas". According to Mr. Allmand, he told Mr. Douglas that "if he was really interested he should apply through the Public Service Commission". Mr. Allmand added that he told Mr. Douglas that he, Allmand, could not be involved in the matter directly. Mr. Allmand conceded later in his testimony that he may very well have told Mr. Douglas that he would look into the possibilities of employment in the Public Service, perhaps in the correctional field. Mr. Allmand said that such a discussion would have related to what jobs might be open to ex-inmates and insisted that he did not offer Mr. Douglas a job.

33. Mr. Allmand testified that Mr. Hart came to see him in his constituency office in Montreal to obtain his assistance in staying in Canada after the termination of his agreement with the R.C.M.P. Mr. Allmand said that Mr. Hart told him that he had been present at the meeting Mr. Allmand had had with Mr. Douglas. Mr. Allmand testified that Mr. Hart did not tell him that he had taped the meeting with Mr. Douglas. Mr. Allmand said that the first time he heard that his meeting with Mr. Douglas had been taped was when Mr. Hart made a statement later that he, Hart, had taped him on the instructions of the R.C.M.P. Mr. Allmand said that the then Solicitor General, Mr. Blais, checked with the R.C.M.P. and told him that the response that they gave to Mr. Blais was that they had not asked Mr. Hart to tape or target him. Mr. Allmand said that he was never informed whether or not he had been taped, with the exception of the allegation made by Hart. As will be noted later, Mr. Dare's testimony in this regard conflicts with that of Mr. Allmand.

34. Mr. Allmand testified that someone informed him that he should not meet with Mr. Douglas or that he should use caution but he cannot remember whether it was the R.C.M.P.

35. Mr. Draper said that perhaps a week or so — or even longer — after receiving the report about the meeting, he quite deliberately discussed the matter with Mr. Dare and that Mr. Dare was shocked and a little taken aback and wanted some detail. He said that Mr. Dare undertook to discuss the matter with the Minister and subsequently came back and told him that he had advised the Minister. He said he has a hazy recollection of Mr. Dare saying that everything was fine as far as the Minister was concerned. He said he did not consciously keep the matter from Mr. Dare and had no intention of ever doing so and that he has no excuse for not advising Mr. Dare between early December and mid-January.

36. Mr. Dare said that before the middle of January 1975 he knew that the meeting had taken place because of conversation with people in the R.C.M.P. but he cannot recollect being told that the source was present at the meeting. Mr. Dare said that Mr. Draper reported the taping to him about mid-January. He said that his reaction when he learned of the taping was that it was totally wrong and that the Minister should not be taped unless there was a formal investigation of a criminal nature or some such situation which would be applicable to any Canadian citizen, and then it would be done by the enforcement side of the R.C.M.P. He said that he concurred in the instruction that Mr. Draper had given to have the tape destroyed and that he did not

discuss with Mr. Draper any form of "remonstration" of Mr. Hart. Mr. Dare told us that on January 22, 1975, he discussed the matter with Mr. Allmand and that at that time he had with him the January 15, 1975, telex report from Mr. McMorran. He said he gave Mr. Allmand the gist of the message contained in the telex but did not show the telex to him. He said he told Mr. Allmand that the Security Service source had been present at the meeting, that the source had taped the conversation and that the tape had been erased. He said that he cannot recall Mr. Allmand's response but that Mr. Allmand did not say anything particular to the point. He said he told Mr. Allmand that the source had taped the conversation contrary to clear instructions from his handler. Mr. Dare said that he went over the contents of the telex with Mr. Allmand to ensure that Mr. Allmand was knowledgeable about the subject matter that was being discussed. He said his purpose was to apprise Mr. Allmand of the fact that the taping had been done and that the Security Service had ordered destruction of the tape. He said he wanted Mr. Allmand to know that for operational reasons a human source of the R.C.M.P. had been at the meeting and had reported on it. Mr. Dare said that he did not tell Mr. Allmand that, in addition to taping the conversation, the source had given a verbal report and he acknowledged that Mr. Allmand did not know that there was such a record in the Security Service files.

Issues

37. There are three issues with respect to this incident, as far as we are concerned. First, did the R.C.M.P. advise the Solicitor General, either before or after his meeting with Mr. Douglas, that an R.C.M.P. source would be, or had been, present at that meeting? Second, did the R.C.M.P. instruct Mr. Hart to tape a conversation of Mr. Allmand, or, knowing that Mr. Hart was likely to do so, did they take any steps to stop him from carrying out his purpose? Third, did the R.C.M.P. advise the Solicitor General either before or after the meeting that his conversation would be, or had been, taped by Mr. Hart?

38. We do not place the same emphasis as Mr. Draper and Mr. Dare on the distinction between the attendance of Mr. Hart at the meeting and the taping. In our opinion, the real issue is whether Mr. Hart ought to have been present at the meeting at all, and subsequently ought to have reported to the Security Service on what was said at the meeting. We consider that if it was appropriate for Mr. Hart to be present and to be debriefed subsequently on what had been said at the meeting, then it was appropriate for him to use a tape recorder if that was otherwise prudent operational practice. If the target is appropriate, and the meeting being attended by the target is appropriate for information collection, the taping is not in itself objectionable. However, if the taping is to obtain surreptitiously the views of a person who is not a target, then it is improper. And even more so if such a taping, if it were to become known to that person, would reflect a lack of confidence in that person. Such would, of course, be the case if the Security Service intentionally taped the Solicitor General without his knowledge.

Conclusions

39. From the above summary of the evidence it is obvious that there is considerable discrepancy amongst witnesses on several key points. We find the facts as follows.

40. The Security Service learned that Mr. Allmand was going to meet with Mr. Douglas in Montreal on December 2, 1974. They made enquiries through Mr. Allmand's office and received assurances that Mr. Allmand was not considering Mr. Douglas for employment or as an adviser. There was confusion within the Security Service as to whether the alleged offer to Mr. Douglas was to be one of employment or related to the preparation of a pamphlet on prison reform. The Security Service feared that Mr. Allmand was being "taken in": they could not understand why their Minister might offer employment to a person who was a target of considerable concern to them. Mr. Hart's handlers, Messrs. McMorran and Plummer, shared this concern.

41. Sometime in late November 1974, Messrs. Plummer and McMorran sought approval from Headquarters for Mr. Hart to attend the meeting and to tape it. At the same time they raised the question of the potential job offer by Mr. Allmand to Mr. Douglas. Someone on the "Black Power desk" at Headquarters gave approval for Mr. Hart to attend the meeting but instructed that there be no taping. Mr. Begalki was aware at that time that Mr. Hart might be present at the meeting. Messrs. Plummer and McMorran relayed those instructions to Mr. Hart. We do not believe Mr. Hart when he says that he received no such instructions. Mr. Hart's assumption that delivery of the body pack to him was tacit approval to tape the meeting is also not borne out by the facts. We are satisfied that Mr. Douglas had other meetings in Montreal from November 30 to December 2, 1974, which were of interest to the Security Service and that those meetings had been planned by Mr. Douglas in advance and were known to Mr. Hart. If that were not so, why would Mr. McMorran have gone to Montreal on November 30? We accept Mr. McMorran's evidence that he went to debrief Mr. Hart in relation to those other meetings. Since Mr. Hart was not debriefed in Montreal in connection with the Allmand-Douglas meeting, Mr. McMorran's presence must have been for the other purpose. It was entirely consistent with his role that Mr. Hart be given the body pack to tape those other meetings.

42. After his return from Montreal, Mr. Hart met with Messrs. Plummer and McMorran on December 7, the date shown on Mr. McMorran's telex of January 15, 1975. At that meeting, or perhaps before it, if Mr. Draper's assumption at the time (which will be discussed shortly) was correct, Mr. Hart advised that he had taped the Allmand-Douglas meeting. He delivered the tape to Messrs. Plummer and McMorran at which time Mr. Plummer listened briefly to the tape with an earphone, took the tape away and had it copied on to a cassette tape, and then returned to the meeting. Upon his return the three of them listened separately through earphones to all or parts of the tape. Mr. Hart, who had used the body pack often, said that it was not technically possible to listen with earphones to the spool tape from the body pack and that Mr. Plummer had left to make a copy and returned later. We think that Mr.

Hart is mistaken about it not being possible to listen to the body pack tape with an earphone. Although, as Mr. McMorran said, it was very unusual that Mr. Plummer had the earphones in his possession when they went to meet Mr. Hart, we are convinced that Mr. Plummer did have the earphones because he and Mr. McMorran had been told earlier by Mr. Hart that he had taped the meeting but they had not yet received the tape. This would explain why, according to Mr. Draper, when he was first told about the taping it was his understanding that the tape was still in the possession of Mr. Hart and he therefore ordered that it be recovered from Mr. Hart and destroyed.

43. Mr. Draper's instructions were not only that the tape be recovered and destroyed but also that there be no reference in the files to the fact that a taping had taken place. We believe that Mr. Begalki has either forgotten or, was not present when those instructions were given, is deficient when he says that there were no instructions that there was to be no reference to taping in files. Mr. Draper says he gave those instructions and Mr. McMorran says that he received them. The original tape and the cassette tape were destroyed, but not before sufficient detail was taken from the cassette tape to permit Mr. McMorran to prepare the January 15, 1975, telex, reporting on the meeting. We do not consider it necessary to decide whether or not the taping of the meeting was complete and thus included a record of that part of the Allmand-Douglas discussion about employment for Mr. Douglas in the Public Service.

44. Mr. Draper did not advise Mr. Dare that Mr. Hart had been present at the Allmand-Douglas meeting and had taped it until after the January 15, 1975, telex report of the meeting had been received at Headquarters. On January 22, shortly after receiving that advice from Mr. Draper, Mr. Dare discussed the matter with Mr. Allmand. The concern of the Security Service throughout was clearly that Mr. Allmand might give employment to Mr. Douglas. We are satisfied that at the January 22 meeting Mr. Dare made no mention of the taping to Mr. Allmand, nor did he specifically advise Mr. Allmand that an R.C.M.P. source had been present at his meeting with Mr. Douglas. We think it more likely that the conversation, which apparently took place at a regular weekly meeting, was very brief and no doubt concentrated on the inadvisability, from the point of view of the Security Service, of Mr. Allmand helping Mr. Douglas to get a job in the Public Service. Mr. Dare said that he gave Mr. Allmand "a general overview" of the contents of the telex — essentially a summary of the Allmand-Douglas meeting which had taken place only the previous month — so that Mr. Allmand would understand what he was talking about when he advised that Mr. Hart had been present and had taped the conversation. It should be borne in mind that the telex message did not refer to taping. We find Mr. Dare's explanation implausible. We are confident that because of the built-in antipathy of the Security Service to disclosing to others the identity of their sources, Mr. Dare had no intention of informing Mr. Allmand either of the source's presence at the December 2 meeting or of the taping and did not so inform Mr. Allmand. We are supported in our conclusion by the evidence of Mr. Allmand, who says that he first learned of the taping through the news media sometime after his later meeting with Mr. Hart in December 1975. We do not accept Mr. Hart's evidence that

he told Mr. Allmand about the taping at this meeting. Upon learning about the taping, Mr. Allmand raised the matter with Mr. Blais, who had succeeded him as Solicitor General. Mr. Blais reported to him that the R.C.M.P. said that they had not asked Mr. Hart to tape or target him. It would have been strange, to say the least, for Mr. Allmand to raise the matter with Mr. Blais at that time if he had been made aware of the facts in his meeting with Mr. Dare, and it would have been stranger still for the R.C.M.P. to give the reply that they did to Mr. Blais to pass on to Mr. Allmand. Until May 13, 1981, we had felt that further support for our conclusion was found in a letter dated February 27, 1978, from Commissioner Simmonds to Mr. Blais. In that letter he said:

It is clear to me that Mr. Allmand was never advised of the fact that his conversation with Douglas was recorded, or in any way witnessed, by a source reporting to the Security Service of the R.C.M.P. In my view, this represents an error in judgement, but as you will note from the contents of this memorandum, the Director General had no personal knowledge of this situation. You may be assured that in the event cases of this nature arise in the future, you would be informed by either the Director General or myself.

On May 13, 1981, we received from Commissioner Simmonds a copy of a letter, dated May 12, 1981, which he had sent to the Solicitor General, the Honourable Bob Kaplan. That letter reads as follows:

I have recently learned that certain assurances I gave your predecessor on 27 February 1978 were inaccurate based upon an incomplete understanding I had of the incident of Warren Hart witnessing and making a tape recording of a meeting between the Honourable Warren Allmand and Roosevelt Douglas in December 1974. I said:

"It is clear to me that Mr. Allmand was never advised of the fact that his conversation with Douglas was recorded, or in any way witnessed, by a source reporting to the Security Service of the R.C.M.P. In my view, this represents an error in judgement, but as you will note from the contents of this memorandum, the Director General had no personal knowledge of this situation. You may be assured that in the event cases of this nature arise in the future, you be informed by either the Director General or myself."

I now know that Mr. Dare did become aware about mid-January 1975 that an RCMP source, Warren Hart, had been present at the meeting and that he had made a tape recording of the meeting which was subsequently destroyed on the instruction of the then Director General Operations, A/Commr. Draper.

Mr. Dare clearly recalls advising Mr. Allmand on 22-01-75 of these facts though I note from his evidence before the McDonald Commission of Inquiry that Mr. Allmand cannot recall Mr. Dare having done so.

I sincerely apologize for the difficulties my earlier assurances may have caused. Because I know this matter is central to certain decisions the McDonald Commission must take within the next few days, I am sending a copy of this letter to Mr. Justice D. McDonald.

As a result of this letter from Commissioner Simmonds to the Solicitor General we reach our conclusions solely on the basis of our analysis of the testimony.

45. We accept Mr. Begalki's testimony that he did not authorize Mr. Hart's attendance at the meeting. Nevertheless, we consider that Mr. Begalki should have brought to the attention of Mr. Draper or Mr. Dare the fact that a source might be present at a private meeting between the Solicitor General and another person. This was an error in judgment on Mr. Begalki's part and reflects a lack of appreciation by him of the relationship which the Security Service ought to have with its Minister.

46. Mr. Dare said that he told Mr. Allmand about the source's presence at the meeting and about the taping a few days after he himself first became aware of the fact. We have already said that we do not believe that he did so. We think he ought to have. It was imprudent of Mr. Dare not to have done so and in itself either manifested an attitude of distrust of his Minister or was motivated by a desire to protect his subordinates. The former is unacceptable; the latter is misplaced loyalty if it results in a lack of candour with the Minister. The Director General of the Security Service must at all times be prepared to take the Solicitor General into his fullest confidence.

47. We understand Mr. Draper's decision to destroy the tape because in the wrong hands it might be edited and misused. Such misuse is not so possible with a written report, of which copies appear on at least two files. However, we are concerned about his instruction that the Security Service records not reflect in any way that the taping had occurred. There was no operational reason for that instruction. Mr. Draper, in his testimony, described the taping as a "social error". He did not want any more people to know about it than those who already did. We are satisfied that his purpose was to protect the Security Service from criticism. We consider that it is improper to alter what would be the ordinary course of reporting for that reason, just as it is to destroy a file or a document for that same reason.

48. Finally, we are concerned about the response of the R.C.M.P. to Mr. Allmand's inquiries made through Mr. Blais. Mr. Allmand was advised that the response from the R.C.M.P. was that they did not instruct that he be targetted or taped by Mr. Hart. Apparently no further explanation was given to him as to the circumstances surrounding the incident. It is difficult for us to conceive the frame of mind which would lead the top echelon of the Force to conclude that it owed nothing further to a former Solicitor General, and still Minister of the Crown, than such a brief statement that was so open to misinterpretation.

CHAPTER 8

NORTHSTAR INN INCIDENT

Introduction

1. In the early summer of 1975, a Task Force, consisting of members of the R.C.M.P. and various municipal police departments in the three prairie provinces, was formed to investigate the affairs of the Royal American Shows (R.A.S.), an American carnival operation which annually toured the major cities in Western Canada. During that investigation certain matters became of considerable public concern.

2. Consequently, on April 22, 1977, the Attorney General of Alberta, the Honourable James Foster, announced the appointment of Mr. Justice J.H. Laycraft to conduct a Judicial Inquiry (the Laycraft Inquiry) pursuant to the Alberta Public Inquiries Act, into those matters.

3. One of the matters "considered relevant" under the terms of reference of the Laycraft Inquiry was an allegation that members of the R.C.M.P. Security Service had monitored, by electronic listening device, rooms occupied by members of the Edmonton City Police (E.C.P.) in the Northstar Inn in Winnipeg during the month of December 1975, while three E.C.P. members and an R.C.M.P. member working with them were investigating the activities of the R.A.S. in Winnipeg.

4. At the conclusion of the Inquiry, Mr. Justice Laycraft reported:

In my opinion, on the evidence available to me, it cannot be concluded that any conversations between Radey, Hahn, Stewart, or Burke [Radey being the R.C.M.P. member and the latter three being the ECP officers] were intercepted in Winnipeg while they were in Winnipeg, in December 1975, nor was there any attempt to do so.

In coming to that conclusion he noted that the evidence given by several key R.C.M.P. witnesses was contradictory and irreconcilable. He also noted that limits of territorial jurisdiction did not "authorize me to enter into an Inquiry into collateral matters in Manitoba". Finally, for what was stated, in an affidavit made by the Solicitor General of Canada under section 41(2) of the Federal Court Act, to be reasons of injury to international relations and national security, he was not allowed access to internal Security Service documentation.

5. We do not suffer under the constraints of the same limit to territorial jurisdiction and non-access to Security Service documents. We therefore determined to investigate, if possible, the allegation that Corporal Radey, who was an R.C.M.P. member assigned to the National Crime Intelligence Service

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in Winnipeg and was working on the R.A.S. case, and the three E.C.P. members, were the subject of an electronic surveillance by the R.C.M.P.

6. We heard testimony on this matter in public on May 27, 28 and 29 and June 5 and 6, 1980. That testimony is found in Volumes 184-188. We received *in camera* testimony on May 28 and June 6, 1980 which is found in Volume C95. In addition, on May 22, 1980 we heard argument by counsel for certain members of the R.C.M.P. with respect to certain evidence, and that is found in Volume C94. Those who testified were the Honourable Francis Fox, Commissioner R.H. Simmonds, Commissioner Maurice Nadon, Assistant Commissioner M.S. Sexsmith, Chief Supt. B. James, Chief Supt. J.A.B. Riddell, Inspector S.D. Maduk and Sergeant J.D. Hearfield. Statutory Declarations were filed with us by Insp. Maduk and Source One. We also received written representations from two members in response to notices given pursuant to section 13 of the Inquiries Act.

Summary of facts

7. On December 9, 1975, at 2:55 p.m., the three E.C.P. officers, Messrs. Hahn, Stewart and Burke, checked into the Northstar Inn and were assigned three rooms on the 24th floor. On the previous day a room had been reserved at the Northstar Inn, through the hotel security officers, for Inspector S.D. Maduk, the Officer in Charge of the Security Service at "D" Division in Winnipeg. At 1:17 p.m. on December 9, room 2405 had been assigned, by the reservations clerk, to Inspector Maduk, who had pre-registered under the alias "J. Swaan" of Poplar Field, Manitoba.

8. At approximately 4:00 p.m. the three E.C.P. officers were joined in the room of one of them by R.C.M.P. Corporal William Radey, to make preparations for the next day when the interviews were to begin. All interviews were to take place outside the hotel rooms at either the residence or place of business of the person to be interviewed. For purposes of these interviews, Cpl. Radey was teamed with Detective Burke.

9. Inspector Maduk told us that he first arrived at room 2405 at approximately 5:00 p.m. on December 9. He said that the reason for his attendance in that room on December 9 was to interview a female public servant (Source One) employed as a stenographer by R.C.M.P. "D" Division Headquarters in Winnipeg. Inspector Maduk said that the purposes of the meeting were (a) to review Source One's intention to apply for a job as a backroom reader with the Security Service, (b) to obtain information from her respecting a former Security Service member whose security clearance had recently been downgraded due to a serious drinking problem and who had consequently been transferred out of the Security Service, and (c) to discuss generally members under his, Maduk's, command.

10. Mr. Maduk told us that the business part of the meeting lasted approximately two to two and one-half hours and that the balance of the evening, approximately two and one-half hours — during which they consumed a bottle of Vodka — related totally to personal and social matters of a non-Force nature. The Statutory Declarations filed by Mr. Maduk and Source One each

disclosed that the personal and social matters included "sexual activity". Mr. Maduk confirmed that Source One's knowledge about the member with a drinking problem was second-hand, coming from an associate of that member.

11. Insp. Maduk said that he did not make a memorandum of the December 9 meeting either on the Casual Source File or on the file of the member whose conduct allegedly precipitated the meeting with Source One. Chief Supt. James testified that it was not a requirement of the Force that a memorandum be made in such circumstances, but that it was good practice.

12. Testimony before the Laycraft Inquiry disclosed that, on the morning of December 10, Cpl. Radey and the three E.C.P. members left the hotel to continue their interviews and that at a time, estimated by Messrs. Burke and Radey to be approximately 4:00 p.m., the two of them returned to the 24th floor of the Northstar Inn and encountered Inspector Maduk in the hallway in the act of closing the door to room 2405. Insp. Maduk told us that he met them at the elevator. In any event, Messrs. Burke and Radey were aware that Mr. Maduk had been in room 2405. Insp. Maduk testified that he had just concluded an interview with Julius Koteles, a Winnipeg lawyer (Source Two), that it was approximately 4:30 p.m. when he left the hotel room and that he did not return to the room again that day. The Statutory Declaration of Source One, filed with us, states that she did not go to the Northstar Inn at any time on December 10, 1975.

13. Again, according to testimony before the Laycraft Inquiry, following this encounter with Insp. Maduk, Messrs. Radey and Burke became suspicious about Mr. Maduk's presence in the Northstar Inn and sometime between 6:00 p.m. and 7:00 p.m. checked the door to room 2405 and found that the night lock pin was out (engaged). This indicated to them that the room was occupied.

14. Evidence before the Laycraft Inquiry also disclosed that because of Insp. Maduk's position with the Security Service, the four police officers concluded that his earlier presence and the apparent occupation of the room were indicative that they were the target of an electronic interception and that room 2405 was being used as the control centre.

15. Detective Burke of the E.C.P. testified at the Laycraft Inquiry that he kept a watch on room 2405 on December 10, from approximately 7:00 o'clock in the evening until about midnight, and that during that time the room lock-pin remained in the out or locked position. According to Mr. Maduk, on the morning of December 11 Cpl. Radey confronted him with the suspicion about bugging and he, Maduk, volunteered to discuss the matter with the E.C.P. officers. He said that he attempted to demonstrate that the lock-pin could accidentally engage, and that, as he recalled when testifying, it did engage during the experiment. The testimony of Detective Burke before the Laycraft Inquiry was that Mr. Maduk's attempted demonstration was not successful.

16. In the absence of conclusive evidence to allay their continuing suspicions, the three E.C.P. officers nevertheless eventually decided to let the matter rest. There the matter did rest and would likely not have surfaced again but for the revival of the topic by Cpl. Radey of the R.C.M.P. in early 1977. In 1977,

following receipt of new information — information that Cpl. Radey had which allegedly confirmed that a bugging had taken place — Alberta Deputy Attorney General R. Paisley asked, through the senior ranking R.C.M.P. officer in Alberta, Asst. Commissioner Wright, that the matter be at once thoroughly investigated.

17. At the request of Mr. Paisley, Asst. Commissioner Wright asked Asst. Commissioner Wardrop, Officer in Charge of "D" Division, Winnipeg, to investigate the allegation. That investigation resulted in a report by Mr. Wardrop to Mr. Wright which contained a number of errors. Receipt of the Wardrop report and subsequent assurances by Commissioner Nadon that he personally "saw no reason to believe the allegation of bugging" did not allay the growing concern of the Attorney General of Alberta that the Force was not fully cooperating with him in providing a complete and independent investigation.

18. In late March 1977 Commissioner Nadon therefore appointed a high-level investigation team from the C.I.B. side of the Force, headed by Deputy Commissioner J.P. Drapeau and assisted by Chief Superintendent James Riddell and Staff Sergeant I.B. Lambert, to look again into the allegation of bugging. On March 23 Commissioner Nadon wrote to Attorney General Foster advising him:

I have appointed Deputy Commissioner Drapeau to fully investigate the issues raised in your letter. . . Deputy Commissioner Drapeau will be able to approach the entire matter with a fresh and impartial outlook.

19. This approach was consistent with the recommendation of then Deputy Commissioner Simmonds that a senior officer "run this right to the ground . . . before this paranoia goes any further". Chief Supt. Riddell told us that the intention was that the investigation ". . . would leave no stone unturned, sort of".

20. Mr. Riddell testified that on March 28, 1977, he interviewed Mr. Maduk in Winnipeg and learned for the first time that Mr. Maduk had interviewed Source One on December 9 and that she was an employee of the R.C.M.P. He said that he interviewed Mr. Maduk alone and took no statement or notes of any kind and that in order not to risk "burning" the source, he instructed Mr. Maduk to report to Ottawa through the regular channels in the Security Service, and to document the name and the circumstances under which he had interviewed Source One. Mr. Maduk did so by report dated March 30, 1977, but that report gave no details about the interview of Source One on December 9 and referred to her only by her maiden name. Mr. Riddell said that although he was "inwardly" concerned about the fact that Mr. Maduk had interviewed Source One alone in the hotel room and had served liquor, he did not question Mr. Maduk further on that aspect because it was his understanding that the Security Service regularly debriefed sources in hotel rooms, much more than the C.I.B.

21. Insp. Maduk testified that he was reluctant to volunteer the full details of what had transpired with Source One on December 9, 1975, and that he did not give the full details to his superiors until January 1980. He said that he

never advised Chief Supt. Riddell that some portion of the meeting with Source One on December 9, 1975, was taken up with personal and social matters. Mr. Maduk told us that he does not recall seeing Source One on December 10, 1975, and that, if he did, it was at work.

22. Chief Supt. Riddell said that he did not attempt to verify the answers he obtained from Mr. Maduk because the investigation had not proceeded to that stage.

23. On March 31 the investigation team met with Attorney General Foster to report on their efforts to date and to seek permission to interview E.C.P. members and the Attorney General's confidential source. Their request was refused for the time being. Both Mr. Drapeau and Mr. Riddell assured the Attorney General at that time, based on their Winnipeg interviews, that Mr. Maduk's attendance in the hotel was "completely legitimate" and that they were "completely satisfied" that Inspector Maduk was in the hotel for the purpose previously explained (to interview the two unidentified sources) and for no other purpose.

24. Thereafter, according to the testimony of Mr. Riddell, the Drapeau Investigation was "held in abeyance" waiting to obtain permission to interview the Edmonton City Police members. In written representations made to us, Mr. Riddell said that Commissioner Nadon ". . . called a halt to this investigation on 4 April, 1977". Mr. Riddell wrote:

. . . it was impossible for me to ensure that a complete and accurate investigation was carried out because I was advised to terminate the investigation approximately 12 days after it commenced and before I had a reasonable time to investigate all issues.

Former Commissioner Nadon testified that the Drapeau investigation continued after March 31, 1977 but he was not sure how much longer. He said it was halted for two reasons: because the Attorney General of Alberta would not permit the investigators to interview the E.C.P. members, and because the Laycraft Inquiry was set up. He told us that he believed that the investigation had continued until the commencement of the Laycraft Inquiry on April 22, 1977. He said:

What I am getting at, [the investigation] could have continued, but it was stopped at the point of the Laycraft Inquiry.

Elsewhere in his testimony he said:

But it wasn't the Laycraft Inquiry that stopped us. It was the — I say this was on another basis, on the fact that we could not see the original complainants.

25. On April 26, 1977, a report of the incident was prepared by the R.C.M.P. for Solicitor General Francis Fox's handbook. That report referred to "complete", "thorough", and "in-depth" investigations and inquiries in Winnipeg and stated "there is no reason to suspect that our member was there for any purpose other than official Force duties". Mr. Fox said that as a result of those statements he was satisfied that all necessary elements in the internal inquiry had been completed.

26. On May 17, 1977, Insp. Maduk forwarded a written report to the Deputy Director General (Operations) in Ottawa. That report, addressed to Mr. Sexsmith, for the first time disclosed the identity of Source One as a public servant working at "D" Division, identified her by her married name, and detailed the matters allegedly discussed during her debriefing. Former Commissioner Nadon testified before us that, had he known about that report, he would have advised the Solicitor General, would likely have ordered a separate inquiry, and would have checked out the genuineness of the statements made in it, including whether Source One was a genuine source.

27. The testimony of Mr. Sexsmith and Chief Supt. James reveals that, since the appropriate senior officers within the Security Service at Headquarters had no knowledge respecting the Northstar Inn Incident, they attached no significance to the report and it was therefore simply noted and filed. Chief Supt. Riddell told us that because the Drapeau investigation had been terminated he did not bother to obtain a copy of that report for his file. The existence of this report was not known to any of the legal representatives of the Force appearing before the Laycraft Inquiry until after that Inquiry had ended.

28. As a result of a request for documents by the Laycraft Inquiry, on June 2, 1977, the R.C.M.P. Legal Branch in Ottawa was instructed to draft an affidavit to be executed by the Solicitor General under section 41(2) of the Federal Court Act claiming privilege for Inspector Maduk's December 1975 expense account and a memorandum of his interview with Mr. Koteles. On June 6, 1977, the Solicitor General, Mr. Fox, executed an affidavit protecting Insp. Maduk's memorandum of March 4, 1976, respecting two interviews with Source Two (Mr. Koteles), one such interview being on December 10, 1975. In his affidavit Mr. Fox deposed as follows:

4. I have examined the original of the specified report and verily believe and certify, pursuant to the Federal Court Act, R.S.C. 1970, 2nd Supplement, c.10, sec. 41(2), that the production or discovery of the specified document or its contents would be injurious to international relations and national security.

7. I, therefore, object to the production, discovery or disclosure of the specified document, or its contents, by any member of the Royal Canadian Mounted Police or any other person on the further grounds that such production, discovery or disclosure would seriously jeopardize or hamper the continued gathering of such information and that this result would be injurious to international relations and national security and, therefore, not in the public interest.

8. Having examined the specified document and having read the terms of reference of the Commission of Inquiry, I have formed the opinion and verily believe that neither the document nor its contents refer in any manner, directly or indirectly, to matters involving Royal American Shows, Inc. or to any of the matters directly or indirectly related to the terms of reference of the Commission of Inquiry.

29. Although Mr. Maduk's May 17, 1977, report was briefly noted by the Corporal acting as the R.C.M.P.'s document coordinator for the Laycraft Inquiry, its significance was not appreciated and it was not brought to the

attention of the Solicitor General during the meeting on June 6, 1977, when the affidavit under section 41(2) was executed. At this meeting no knowledgeable member of the Security Service was present. The May 17, 1977, report did not surface again until November 1977 when Chief Supt. Riddell travelled to Winnipeg to interview Source One and Source Two, at the request of the Solicitor General. Even then, its contents were not made known to Deputy Commissioner Drapeau or the Laycraft Inquiry.

30. The Solicitor General had requested that Source One and Source Two be contacted to ascertain if they were prepared to testify. Mr. Riddell said that he conducted no other investigation, did not re-interview Inspector Maduk, and was very careful in the statement obtained from Source One not to deal with the subject matter of her interview with Mr. Maduk. He said that he did not at any time express his own private concerns about the propriety and necessity of Insp. Maduk interviewing Source One alone in the hotel room on December 9. He said that he simply drafted a report for the Commissioner to forward to the Solicitor General which was intended to convey the impression that there was no cause for concern with respect to either of the sources. That letter of report, dated November 18, 1977, was forwarded to Mr. Fox. There is no mention in the letter of the fact that Source One was an employee of the R.C.M.P., although that fact was known to Chief Supt. Riddell as a result of his interview with her.

Conclusions

31. Our concerns in this matter were fourfold. First, we wished to determine whether there was any additional evidence that Mr. Justice Laycraft had not been able to inquire into as to whether there had been bugging. Second, we wished to determine whether a proper investigation of the alleged bugging had been conducted by the R.C.M.P. itself. Third, we were interested in determining whether the Laycraft Inquiry had been misled in any way. Our fourth concern was whether the Solicitor General had been fully informed of all the relevant facts.

32. We did not set out to try to establish whether or not there had been an electronic surveillance of the E.C.P. officers by the R.C.M.P. Mr. Justice Laycraft examined that question and stated that on the evidence available to him it could not be concluded that there had been such surveillance. Our investigative staff and counsel, in the course of pursuing our objectives, also looked into that question thoroughly and concluded, and so advised us, that there had been no surveillance. They found no new evidence on that matter. Since we heard very little evidence on the question and did not pursue it we do not propose to make any finding in that regard.

33. The investigation by the R.C.M.P. was actually conducted in two stages. The first stage was that undertaken by Assistant Commissioner Wardrop in early 1977, at the request of Assistant Commissioner Wright, after the latter had spoken to the Attorney General of Alberta. That investigation, which could have gone a long way to allay the concerns of the Attorney General of Alberta, was so incomplete and inaccurate that it could have done nothing

other than to heighten the suspicions which that Attorney General already had. The careless manner in which it was carried out was exemplified by the fact that it referred to the events of December 10 as having occurred on December 11. This conclusion was arrived at by relying exclusively on Insp. Maduk's memory with no apparent reference to any of the available documentation which would have provided the correct date.

34. The second stage of the R.C.M.P. investigation was that ordered by Commissioner Nadon and conducted under the direction of Deputy Commissioner Drapeau by Chief Supt. Riddell and Staff Sgt. Lambert. The purpose of the investigation was to determine whether or not there had been an electronic surveillance of the E.C.P. by the R.C.M.P. At the outset, the only known person alleged to be involved in such surveillance was Inspector Maduk, and the allegation arose out of his presence in the Northstar Inn on December 10. The allegation having been denied by Insp. Maduk, the logical way to proceed with an investigation would have been to establish positively what Mr. Maduk had been doing at the Northstar Inn on December 9 and 10, thus disproving his participation in any electronic surveillance. Chief Supt. Riddell appears to have made no effort to follow that course. Mr. Riddell did not conduct interviews with Sources One and Two to confirm Mr. Maduk's story as to the reason for his presence in the hotel on those two days. We are satisfied that, had Mr. Riddell delved into the matter, he would have discerned the nature of the meeting with Source One on December 9. Knowledge about what actually occurred on December 9 would have helped to explain to all concerned Insp. Maduk's conduct and reluctance to disclose his actions. Only when the investigation could verify the de-briefings of December 9 and December 10 and anything that flowed from that knowledge, could the Force be in a position to truly report to Attorney General Foster and the Solicitor General that it had conducted a "complete and thorough" investigation.

35. The decision of Deputy Commissioner Drapeau not to carry on with the investigation, after he was denied the opportunity to speak to the E.C.P. members and the source of the Attorney General of Alberta, is also difficult to understand in the circumstances. There were still a number of avenues open to the investigating team, such as interviews with the sources, as mentioned above, and a follow-up of Insp. Maduk's report of March 30 to Security Service Headquarters. That report of March 30 was clearly incomplete and by Chief Supt. Riddell's own acknowledgement not what he expected would be filed by Mr. Maduk. Yet the matter was not pursued at the time.

36. It is our conclusion that the investigation in this matter was inept and careless. Chief Supt. Riddell should have conducted it more thoroughly and Deputy Commissioner Drapeau should have ensured that it was so conducted. Despite the incompleteness of their investigation, Deputy Commissioner Drapeau and Chief Supt. Riddell assured the Attorney General of Alberta that Insp. Maduk was in the hotel room to interview two sources and "for no other purpose". In so reporting they acted carelessly and were derelict in their duty, particularly bearing in mind that they knew that their report would be the basis of information to be given to the Attorney General of Alberta.

37. The report of April 26, 1977, to Mr. Fox was clearly not correct. The investigation could not in any sense have been described as "complete", "thorough" or "in-depth", even in relation to investigations and inquiries in Winnipeg. We fail to see how such a statement could have been made responsibly when there had not even been any interview by the investigators with the two sources. We consider that the language used in the report was both extravagant and inappropriate.

38. When, at Mr. Fox's request, the sources were interviewed in November 1977, Chief Supt. Riddell learned for the first time that Source One was a female employee of the R.C.M.P. That information was not passed on to Mr. Fox. The relevance of conveying such information to Mr. Fox should have been obvious to Mr. Riddell.

39. The combination of the inadequacy of the Drapeau Investigation and the structures put in place by the R.C.M.P., both to investigate an allegation of the E.C.P. members and to respond to the Laycraft Inquiry, resulted in both the Solicitor General and that Inquiry not being provided with all relevant information. The Security Service had very little input into either the Drapeau Investigation or the Laycraft Inquiry, even though the Northstar Inn Incident was a Security Service matter. That this adversely affected the investigation and the information provided to the Laycraft Inquiry cannot be doubted because it meant that no one within the Force was totally knowledgeable about the Northstar Inn Incident. No one from the Security Service was appointed to the Drapeau Investigation team, even in a liaison capacity. Thus, there was a total lack of coordination between the investigators and the Security Service with respect to the flow of documentation. Nor was there any mechanism to coordinate the C.I.B. and Security Service involvement in the Laycraft Inquiry, including the collection and review of relevant Security Service documents respecting Source One and Source Two. This resulted in some documents, and particularly the very significant document of May 17, 1977, not being brought to the attention of the Solicitor General when he was executing the affidavit under section 41(2) of the Federal Court Act. That document of May 17, 1977, for the first time, disclosed that Source One was a female public servant employed by the R.C.M.P. Had that fact been made known to the Solicitor General on June 6, 1977, when he executed the affidavit, events might well have taken a different course. For the reasons stated above we have concluded that both the Solicitor General and the Laycraft Inquiry were misled by the Force, albeit unintentionally.

40. Many of the problems which arose in this matter, beginning on December 10, 1975, could have been avoided had Inspector Maduk prepared and filed, in a timely fashion, a comprehensive report concerning his interview with Source One on December 9, 1975. His failure to do so was contrary to good practice and contributed greatly to the senior officers of the Force, the Attorney General of Alberta and the Solicitor General, not being completely informed at the earliest possible time as to what had actually occurred at the Northstar Inn on December 9 and December 10, 1975.

41. It is obvious to us that the combination of Inspector Maduk's failure to be forthright, and the deficiencies of Asst. Commissioner Wardrop's report and

Asst. Commissioner Drapeau's investigation, contributed immeasurably to an exacerbation of the relationship between the Attorney General of Alberta and the R.C.M.P. We do not know whether, had the truth about Inspector Maduk's meeting of December 9 meeting with Source One been known to the Laycraft Inquiry, its proceedings would have been shortened. It is clear, however, that the Laycraft proceedings would have been different in relation to the December 9 meeting.

42. Since drafting our report on this matter we have received a copy of a report, prepared in 1980, of an internal R.C.M.P. investigation of certain aspects of this incident. According to the report that investigation dealt with the following:

PART I Section 41(2) Federal Court Act (FCA) affidavit issued by The Honourable Francis Fox on 77-06-06, in respect to the Laycraft Inquiry.

PART II Insp. S.B. Maduk's conduct throughout the entire episode, including the accuracy of his expense account for the period 75-12-01 to 75-12-15.

PART III Irregular handling of two key Security Service documents (i.e., Insp. MADUK's memoranda to A/Commr. M.S. SEXSMITH dated 77-03-30 and 77-05-17), and the consequences that flowed therefrom.

PART IV The adequacy of D/Commr. J.P.J.P. DRAPEAU's investigation, including the adequacy of reporting of the information gathered to more senior personnel.

PART V The adequacy of reporting to the Solicitor General.

PART VI Accuracy of certain testimony at the Laycraft Inquiry and the McDonald Commission of Inquiry.

The report also says that there was one aspect that was not investigated. It states:

The investigation did not encompass the alleged electronic monitoring of the Edmonton City Police by the RCMP at the North Star Inn on 75-12-09 and 75-12-10. A review of all relevant material establishes beyond doubt that there was no interception of any conversation between Cpl. W.P. RADEY, Insp. H. HAHN, S/Insp. W.H. STEWART, or Detective B. BURKE (Edmonton City Police), nor was there any attempt to do so. There was no point, therefore in re-investigating this aspect of the matter.

Our counsel had been given an opportunity to read a copy of the Report some time ago but no copies were made available to us at that time. The investigation was conducted under the direction of Assistant Commissioner R.R. Schramm. Although we have made no attempt to verify the accuracy of the interviews conducted by the investigators, we are very favourably impressed with the quality of the report itself.

43. We recommend that this chapter of our Report and a copy of the R.C.M.P. internal investigation report be referred to the Attorney General of Canada, the Attorney General of Alberta and the Attorney General of Manitoba.

CHAPTER 9

DESTRUCTION OF AN ARTICLE

Introduction

1. The evidence on which the facts in this chapter are based was heard *in camera* and is found in Volumes C110 and C111. The witnesses were Mr. John Starnes and Assistant Commissioner H. Draper (retired).

Summary of facts

2. Some years ago a suspected Intelligence Officer of a foreign power visited Canada. The Security Service suspected that this person was interfering in Canadian political affairs and consequently placed him under surveillance. During the course of the surveillance an article was surreptitiously removed by the Security Service from the possession of the person, with a view to examining it and returning it without the person's being aware of its removal. This was done without the benefit of a search warrant. Due to a turn of events beyond the control of the Security Service officers involved, it was not possible to return the article without the person's becoming aware that it had been removed. An examination of the article disclosed that it belonged, not to the foreigner, but to a Canadian citizen who was accompanying the foreigner.

3. The matter was reported by the Security Service investigators to the Officer in Charge of the C.I.B. at the Division, with the recommendation that the article be returned to its owner through a local police department in a manner which would make it appear that the police department had recovered the article as though it had been lost or stolen. That recommendation was passed on with approval by the C.I.B. Officer in Charge to the Deputy Director General of the Security Service. The Deputy Director General (Operations) at that time, Assistant Commissioner Draper, discussed with the Director General, Mr. Starnes, what ought to be done with the article and Mr. Starnes ordered that it be destroyed. That instruction was passed on through Mr. Draper and the article was in fact destroyed.

4. We were advised by the Commissioner of the R.C.M.P. that, upon learning of this incident in late 1977 or early 1978, he brought it to the attention of the attorney general of the province in which it had occurred. We confirmed that with the attorney general when we were discussing other matters with him.

5. Mr. Starnes told us that he felt he had no other choice than to order the destruction of the article because of "... the possibility of an international ruckus..." and "... the domestic political ramifications..." if it had become known that the Security Service had been conducting a surveillance and had

CONTINUED

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removed the article for examination. He said: "... anything that could be done to prevent that kind of thing happening [i.e. an international ruckus or domestic political ramifications], it seemed to me was worthwhile".

Conclusions

6. We do not propose to discuss here the implications of the warrantless search and seizure of the article. Such activities are examined in Part III of our Second Report. Our concern here is the destruction of the property. Since this particular incident was reported to the attorney general of the province in which it occurred, we will make no further recommendations in that regard in relation to the legal consequences. We do, however, feel that we must comment on the conduct of Mr. Starnes in ordering the destruction of the property. When Mr. Starnes said that "*anything*" (our emphasis) would be "worthwhile" to prevent the problems which might arise from disclosure, we do not take him literally. Nevertheless, we are extremely disturbed that he was prepared to go to the lengths that he did to prevent disclosure. He was faced with the possession by the Security Service of property which had been removed surreptitiously by the Security Service, and without warrant, from the possession of a person, and then discovered to be the property of another person. Regardless of the suspicions of the Security Service with respect to the activities of the two persons involved, there is no evidence that those persons were acting unlawfully and they had a full right to the article in question. As soon as the facts came to the knowledge of Mr. Starnes, he should have instructed that the article be returned to its rightful owner in whatever lawful fashion ran the least risk of disclosure of the Security Service's activities. Mr. Starnes was not faced, as he told us he was, with a 'Hobson's choice', or, at least, not with the Hobson's choice that he described. He ought to have considered that the only choice open to him was to see that the article was returned to its owner, and then concentrated on the best method of returning it. We consider that his conduct in the circumstances was improper. Were such conduct to be considered as acceptable, no one's property would be safe from destruction by the Security Service, if to do so would assist in concealing or furthering an operation of the Security Service.

CHAPTER 10

A REPORT ON CERTAIN MATTERS, PRINCIPALLY COMPLAINTS FROM MEMBERS OF THE PUBLIC

Introduction

1. From the beginning of our work we realized the importance of receiving allegations from members of the public. We considered that our investigation of complaints might lead us to conduct by members of the R.C.M.P. that was "not authorized or provided for by law", and from there we would be able to consider whether the conduct was exceptional or endemic. We also considered that receipt and investigation of complaints was one way of restoring public trust in the R.C.M.P., such trust having been specifically referred to by the Order-in-Council that created our Commission. To make the public aware of our willingness to receive and investigate allegations from members of the public we published, during October and November 1977, a notice in most of the daily newspapers in Canada and many ethnic newspapers requesting the public to submit complaints to us. That notice was reproduced as Appendix "M" to our Second Report.
2. In June 1978 our Chief Counsel attended a meeting of provincial attorneys general to discuss jurisdictional problems associated with the investigation of complaints arising within the provinces. The discussions at that meeting set the tone for the relationship which prevailed between our Commission and the attorneys general of those provinces in which we had complaints to investigate. The full text of the statement read by our counsel to the attorneys general at that meeting may be found in Appendix A to this Report.
3. In October 1979 we published, in 27 daily newspapers across the country, a notice indicating that we could not investigate any allegations received after November 19, 1979. That notice was reproduced as Appendix "N" to our Second Report.
4. 293 persons wrote to us before November 19, 1979, most of them complaining about the conduct of members of the R.C.M.P., some about non-members. In six instances the matters raised did not constitute allegations about such conduct but related to questions of policy. These six files, while not investigated, were referred to our research staff for consideration.
5. Following the "cut-off" date, 45 persons submitted complaints which we did not investigate. In most cases we advised these people to refer their

allegations directly to the Commissioner of the R.C.M.P. or the Office of the Solicitor General. We might here observe that, if recommendations contained in our Second Report, Part X, Chapter 2, were adopted and implemented, that there be an Office of Inspector of Police Practices, such complaints might have been referred to that office or directed by the complainant directly to that office.

The nature of our investigation

6. From the outset, we considered it essential to preserve the confidentiality of the complaints received from members of the public. We also felt it necessary to attempt to interview all complainants.

7. Whenever possible, as occurred in most instances, our investigators interviewed the complainant as a preliminary step in the investigation. They invariably reviewed relevant R.C.M.P. files. During the course of three years' work by our investigators thousands of files were examined. Following such examination in each case, our investigators, whenever possible, conducted an interview of R.C.M.P. members who had been involved, and of other witnesses.

8. After each investigation, detailed reports were prepared by the investigator, reviewed by Commission counsel and submitted to us for consideration.

9. Many allegations required the investigators to work closely with our counsel in order to produce detailed studies. Examples are some of the allegations submitted by labour and ethnic groups. These detailed studies were used in the preparation of certain chapters of our Second Report and other chapters of this Third Report.

Statistical information

Types of complaints

10. 287 complaint files were investigated by us. In several cases individuals wrote on behalf of groups or associations. Consequently, the number of persons on whose behalf our investigations were conducted is significantly higher than 287.

11. The 287 complainants produced 496 specific allegations which we categorized as follows:

Category	Number of complaints	%
Agents and sources (illegal acts of)	15	3
Arson	5	1
Assault	21	4
Blackmail	5	1
Breach of contract	3	0.75
Bribes	4	0.75
Conduct unbecoming	12	2.5
Damage to property	9	2
Detention (improper)	24	5
Disciplinary process (improprieties during)	7	1.5

Category	Number of complaints	%
Disruption and Disruptive tactics	24	5
Entrapment	4	0.75
Exhibits (improper use of)	2	0.5
Electronic surveillance	56	11.25
Falsification of documents	8	1.5
Harassment	77	15.5
Information (improper use of) Investigation (improper or inadequate)	19	3.75
Mail openings and intercepts	53	10.75
Murder	29	5.75
Obstruction of justice	2	0.5
Perjury	16	3
Screening and clearances (improprieties during)	6	1.25
Searches	9	2
Surveillance (electronic and physical)	17	3.5
Thefts	33	6.5
Threats	15	3
Training (inadequate)	13	2.5
Warrants (improper use of)	4	0.75
TOTAL	4	0.75
	496	100

12. The complaints came from persons representing a cross-section of society. They included labour leaders, leaders of ethnic groups, fishermen, presidents of corporations, housewives, lawyers, doctors, farmers, prison inmates, members and ex-members of the R.C.M.P., and politicians.

13. Many of the complainants had sought redress elsewhere prior to contacting us, in many instances through direct dealings with the R.C.M.P. Although we are persuaded that in most cases R.C.M.P. investigations into allegations against their own members are fair and thorough, we feel that a greater amount of openness by the Force in their dealings with complainants would go a long way towards resolving many of the complaints received by it. In our Second Report, Part X, Chapter 2, we expressed our view that once the R.C.M.P. has completed the investigation of a complaint it should advise the complainant whether the Force has determined the allegation to be founded, unfounded or unsubstantiated. We recommended, however, that the nature of the discipline or punishment given an R.C.M.P. member need not necessarily be communicated to the complainant.

14. Some of the complaints filed with us were unfair attacks on members of the R.C.M.P., motivated solely by a desire for revenge. Because the facts presented to us by the complainant contained only one or two distorted details, such complaints were sometimes difficult to distinguish from those allegations which were made in good faith.

15. Our investigators and counsel concluded that 83 of the 287 complaints (29%) were by mentally disturbed persons. In many instances the mental instability of the complainant was evident on the face of the complaint, while in other cases the instability became apparent only during some stage of the investigative procedure. In each of these cases, a full investigation was conducted in order to determine whether there was any substance to the allegation. The following are some examples of this sort of case. We mention them to illustrate that in many of these cases the mental stability was evident on the face of the record:

- (i) During an interview with one of our investigators, a complainant blamed the R.C.M.P. and another police force for ordering the installation of a transmitting device in his teeth while he was undergoing nose surgery. This complainant further alleged that his brains had been "bugged" thus depriving him of "the privacy of thought".
- (ii) One man who blamed the government in general and the R.C.M.P. in particular for harassing him wrote to say: "I was stopped several times on the street and told if I pursue the case I will either be put away like the Russians or killed. Since I was murdered in [place] died and brought back to life by friends, and left partially paralyzed, [...] was picked up and drugged and murdered on January 20, 1973."
- (iii) A woman attended at our offices to file a complaint. During an interview with our counsel she indicated her firm belief that she was being controlled by short wave and subjected to radiation. The complainant also stated that she constantly heard people talk on T.V. about her most personal secrets and had on several occasions been sexually assaulted in her apartment by unknown forces. She said that on one occasion she had been assaulted by a male who identified himself as a member of the R.C.M.P.

16. The statistical analysis of allegations by province, territory and country is as follows:

Province, Territory or Country	Number of complaints	%
Ontario	97	33.8
British Columbia	59	20.6
Quebec	44	15.3
Alberta	31	10.8
Saskatchewan	18	6.3
Manitoba	8	2.8
New Brunswick	8	2.8
Nova Scotia	8	2.8
Newfoundland	6	2.1
Prince Edward Island	1	.3
Northwest Territories	0	0
Yukon	0	0
Outside Canada	7	2.4
TOTAL	287	100

Conclusions concerning the merit of the allegations

17. Of the 287 complainants who contacted our Commission:

- (a) 51 had complaints which we consider were well-founded or partially well-founded;
- (b) 189 had complaints which after investigation we considered were unfounded;
- (c) 16 had complaints which we were unable to investigate fully for one or more of the following reasons:
 - the matter was *sub judice* (before a judicial tribunal);
 - there was lack of cooperation from the complainant or a provincial authority;
 - we were unable to locate the complainant;
 - the complaint did not come within our mandate;
 - the complaint related to incidents which had occurred so long ago that most of the witnesses had died and many relevant documents had been destroyed.
- (d) 31, upon examination, were found to contain no real complaint or allegation against the R.C.M.P.

18. 27 persons submitted unintelligible material which we did not investigate. No files were opened by us in these cases and they are not included in the 287 complainants referred to earlier.

19. With respect to the 51 complainants whose complaints were partially or fully well-founded, we have selected 36 to report on in this chapter. In some instances, where more than one complaint of a similar nature has been received, we have made a selection in order to present only the most illustrative of the group. Certain other well-founded or partially well-founded allegations are not reported on here but are discussed elsewhere in our Second Report and this Third Report, although they may not be clearly identified as allegation files. These other cases include certain types of complaints which dealt with institutionalized practices such as mail openings and surreptitious entries.

20. As indicated earlier, we always felt it was essential to preserve the confidentiality of the complainants corresponding with the Commission. This explains the format chosen for the presentation of our 36 detailed summaries, which follow the style invariably used by provincial Ombudsmen in the presentation of their reports. In all 36 cases we have preserved the anonymity of the participants by leaving out the names of all participants and exact dates and locations.

Conclusion

21. Our work in this area has been extremely useful in three respects beyond the circumstances of each particular complaint. First, on occasion it has served to identify some specific problem areas which we then decided to examine in greater detail. Second, it brought home to us the importance and seriousness of

jurisdictional problems which can arise during the investigation of public complaints concerning the activities of a federal police force required to function within provincial and municipal jurisdictions. Third, it contributed to our confidence in recommending, in our Second Report, Part X, Chapter 2, the creation of an Inspector of Police Practices who can function with the cooperation of the judiciary, the police and provincial and municipal authorities.

22. Current R.C.M.P. policy concerning the engagement of recruits for the Force does not call for the professional administration of standard psychological tests designed to reveal propensities for violence on the part of the applicant. While the validity of this procedure may be argued, the fact remains that a number of police forces have adopted it as part of the physical and mental fitness requirements which must be satisfied before an applicant is accepted. As an example the Minnesota Multiphase Personal Inventory (M.M.P.I.) questionnaire, when properly administered, may raise enough doubts about an individual's attitude and mental ability to respond to stress without resorting to the use of force, to justify a recommendation that the application be rejected.

23. We are satisfied that the great majority of well-founded or partially well-founded allegations refer to incidents which are isolated and do not reflect an institutionalized or systematic practice.

24. Although difficult to ascertain with any great precision, it is probable that many complainants would not have complained had our Commission not existed. We infer this from the fact that many persons who wrote to us after the cut-off date, when advised that we would not investigate but that they could forward their allegations directly to the Solicitor General or the Commissioner of the R.C.M.P., expressed the view that such action would inevitably prove to be useless.

DETAILED SUMMARY NO. 1

1. This complaint was brought to our attention by the R.C.M.P. Task Force Co-ordinator, together with the complete file concerning an internal investigation.

2. On March 17, 1979, the complainant and a companion were arrested for drunkenness and taken into custody by an R.C.M.P. constable, a member of a municipal detachment. The companion was lodged in the cells without incident but the complainant was said to have become uncooperative during the booking procedure, provoking the constable into using force. During a struggle the constable choked, kicked and struck at the complainant with his police baton, and finally dragged the complainant to the cells by his hair. The complainant was reported to have suffered a minor injury to his forehead. Following his release he filed a complaint of assault against the constable, which resulted in what is known within the R.C.M.P. as a full service investigation. The complainant did not wish to initiate criminal proceedings but when the reports

and evidence were reviewed by the Attorney General he instructed that the constable was to be charged with assault causing bodily harm. Disciplinary action taken against the constable consisted of an official warning. The constable later appeared before the provincial judge, pleaded not guilty and was acquitted. There was no appeal.

Conclusions

3. This case is a good example of an impartial and thorough internal investigation — i.e. an investigation within the R.C.M.P. — into a citizen's complaint, resulting in criminal charges being preferred against the member involved, even though the complainant declined to do so, and even though the constable was acquitted — somewhat to our surprise, in view of the internal investigation and the statements of witnesses.

4. Furthermore, a disciplinary sanction was imposed independent of the court result. It would be of interest here to note the four levels of discipline that are provided for in the Force's Administrative Manual (II.13 11c): (1) cautioning; (2) warning; (3) charging with a service offence; (4) compulsory discharge. The last two are self-explanatory. The meaning of the first two may be derived from the explanations given in the manual, as follows:

(1) Cautioning

A member should be cautioned for a minor breach of conduct or unsatisfactory performance when an official warning is deemed too severe.

(2) Warning

A member should be warned for a breach of conduct, unsatisfactory performance of his duties, or where there is evidence of a correctable fault or shortcoming when a cautioning is deemed inappropriate and a service charge too severe.

DETAILED SUMMARY NO. 2

1. In September 1978, the Chairman of this Commission, following a chance discussion with another judge from his court, learned of this matter and requested and ultimately obtained an Appeal Book from the Registrar of the Appellate Division of the Supreme Court of Alberta. The document revealed that at a trial a joint statement by the defence counsel and the Crown attorney was read into the record to indicate that two members of the R.C.M.P. had used physical assault and oral threats against the accused.

2. Without delay we brought this information to the attention of the R.C.M.P. The ensuing R.C.M.P. internal investigation and our study of court documents have revealed the following story.

3. The accused person, a juvenile at the time, was hitchhiking in Alberta. He had in his possession a sawed-off rifle. The victim, travelling alone in his car, stopped to take in the accused as a passenger. The pair travelled together for some 40 miles, at which time the accused shot the victim, stole his belongings and hid the body down a side road. The accused then went on his way with the

victim's car and documents of identification. The accused was arrested in British Columbia while masquerading as the victim and attempting to negotiate a forged cheque.

4. A corporal and a constable of the R.C.M.P. were assigned to investigate these incidents. They quickly realized that the accused had been responsible for the murder and set out to prove that fact. During the investigation the corporal kicked the accused in the genitals and attempted to intimidate him by threats. Although the constable did not participate in the physical assault, he was present. The accused finally confessed and was convicted of second-degree murder without eligibility for parole before 20 years.

5. The constable, since promoted to corporal, was warned for his "passive participation" in the assault on the accused. The other corporal, who was suffering from arrhythmia, was granted a medical discharge from the Force. After his discharge, the investigation resulted in a charge of assault causing bodily harm being laid against him. In October 1979 he appeared in court in B.C., entered a plea of guilty to a reduced charge of common assault and was granted an absolute discharge.

6. Shortly after the accused's arrest, the fact that he had been physically abused was openly discussed by some members, senior N.C.O.'s and a commissioned officer. No one at that time instituted an investigation. The matter of the assault was discussed in an attachment to a division investigative report on the homicide.

Conclusions

7. Although the accused was arrested in "E" Division (B.C.) and both investigating members were from B.C., the commanding officer of "E" Division was not told of the assault incident at the time it happened in Alberta. The commissioned officer, a Superintendent, who had learned of the incident, was officially warned for "failure to initiate an investigation" once he became aware of the assault committed by the members under his command. He had been told of these incidents by an Inspector who felt that the counselling he had given to the two members was sufficient and that no further action was necessary. The subsequent internal investigation concluded that both the Inspector and the Superintendent had handled the matter of the assault in a careless fashion. We have been advised by the R.C.M.P. that steps have been taken in "K" Division — Alberta — "to ensure that review procedures are adequate to avoid similar situations in the future".

8. This case was referred to in our Second Report, Part III, Chapter 10.

DETAILED SUMMARY NO. 3

1. A lawyer wrote to inform us of two separate and unrelated incidents in which he questioned the conduct of members of the R.C.M.P. The first involved a boating mishap in which five persons from a small capsized craft were in the water for five hours before they were rescued by a boat whose crew

accidentally spotted them while searching for another vessel. The second consisted of an alleged 'deal' in which an R.C.M.P. member agreed not to proceed with an impaired driving charge if the accused supplied him with information on drug dealers.

The First Matter:

2. Inquiries into the first incident disclosed that the captain had radioed a distress call on his C.B. radio just before the boat capsized. The call was received by a woman who notified the local R.C.M.P. detachment. Following the instructions of the member on desk duty, this woman contacted a fish plant in the area, and requested that they inform their fishing vessels to keep on the look-out for a pleasure craft in difficulty. Later the same day, someone from the fish plant notified the woman that none of their vessels had seen a boat in trouble. The woman relayed this information to an R.C.M.P. member on desk duty who stated "It is probably a hoax". The member on desk duty made no further inquiries and the incident was considered closed. As it turned out the distress call had been legitimate and the victims were eventually rescued only by good luck.

3. Following criticism in the local newspaper for this inaction, the R.C.M.P. ordered an internal investigation. The result was that the R.C.M.P. changed their policy and procedures manual dealing with distress calls. Previously, on receipt of a call, the R.C.M.P. investigated its authenticity, and only then, if satisfied, notified the Rescue Co-ordination Centre. Since the incident described above, they immediately notify the Rescue Co-ordination Centre first, and then attempt to verify the call.

4. Investigation by our staff confirmed that hoax calls in this particular area are not uncommon. Considering R.C.M.P. policy at the time we cannot fault the members concerned.

The Second Matter:

5. The second incident concerns events which occurred following a motor vehicle collision in which a man and a woman were involved. Their car left the roadway, plunged into a harbour and was completely submerged. The man and woman swam to shore and were taken to hospital by ambulance. While the man was at the hospital, the investigating R.C.M.P. member gave him a standard breathalyzer demand and requested that the man accompany him to the police car. En route to the police station the conversation revolved around the fact that the member had formerly been in the drug section and that he was acquainted with the man's brother. While at the local detachment, according to the man, the member refused to allow him to take the breath test, charged him with failing to provide a breath sample, and told him that the charge would be withdrawn if he would provide enough information to allow the member to make a big drug 'bust'. According to the man, he gave the member drug information on at least two occasions following his release, but the member did not consider it sufficient to warrant withdrawing the charge.

6. In frustration, the accused related his version of the events to his solicitor. The accused appeared in court with his counsel and the charge was dismissed, not because of the alleged deal, which had become the principal defence, but because the judge was not satisfied that the R.C.M.P. member had had sufficient grounds to demand a breath test in the first place.

7. This matter raised problems because the evidence of the accused and that of the member, as to who instigated the deal and whether or not the man refused to take the breathalyzer test, was completely contradictory. The R.C.M.P. internal investigation resulted in the member being informed that he might have been indiscreet. In a report a senior R.C.M.P. officer stated:

"The member was perhaps indiscreet and slightly overzealous but acted properly, however, senior management has taken steps to counsel members as to the proper procedure to be followed under similar circumstances".

8. There is ample evidence that a "deal" was discussed: (a) The court date was set far enough in advance to allow the accused time to produce evidence on drug offences. (b) The accused was given the member's home telephone number. (c) The accused contacted the member on at least two occasions. (d) The member admitted in court that he honestly intended to take action to have the charge withdrawn should evidence on a drug 'bust' be forthcoming. We are unable to make findings as to the specific allegations of misconduct in this case. We do believe that R.C.M.P. members, regardless of the circumstances, should not give the impression that they possess the power to have charges of any kind withdrawn.

9. There is evidence from this investigation and others that members, when required to assume new functions, may not be properly briefed or prepared for the change in their duties. It is also evident from the experiences of our investigators that sometimes members are not as conversant as they should be with Force policy and guidelines as set out in the various manuals. The experience of our staff leads us to make the following comments: When an R.C.M.P. member is assigned to new functions in a field in which he has no previous experience, he should receive guidance and formal training as to his new duties, rather than being left to learn by trial and error. This, we believe, would eliminate mistakes and improve community relations.

10. In our Second Report, Part VI, Chapter 2, we expressed our views as to the importance of formal training in the security intelligence agency. We have formed the opinion that there is a similar need on the criminal investigation side of the R.C.M.P. We recognize that certain courses and guidance already exist, but wish to draw attention to the ever-increasing need for continuing education in police work.

DETAILED SUMMARY NO. 4

1. A Member of Parliament sent us copies of correspondence dealing with the complaints of a former R.C.M.P. auxiliary constable, who had served at an R.C.M.P. Detachment for twelve months.

2. R.C.M.P. files indicate that his services were terminated as a result of an internal investigation into an assault incident that occurred in his second month. Service court proceedings alleging assault and improper conduct had been instituted against two constables, and the auxiliary constable was asked to appear as a witness.

3. During the service court proceedings, it was reported that, in an effort to protect one of the accused members, a number of other R.C.M.P. members, including the auxiliary constable, were reluctant to give an accurate and complete account of the circumstances surrounding the alleged assault. When the matter was concluded, the auxiliary constable's security clearance was rescinded; he was released from the auxiliary programme, and subsequently refused re-engagement.

4. He complained to the Commanding Officer of his Division that his interview at the time of the incident had been conducted in a rude and arrogant manner, and that the loss of his security clearance had impugned his credibility, honesty and integrity within the community where he lived and had served as an auxiliary.

5. The grievance was investigated by a Corporal who reported that he had little doubt that the auxiliary constable had not told all he knew during the investigation, and in fact had "probably lied during the investigation and service court". The corporal continued: "The evidence available is not sufficient to justify charges; however, it does cast a grave doubt to the subject's honesty and therefore his security status".

6. The Commanding Officer then advised the auxiliary constable that he agreed with the decision to rescind the security clearance. Later the auxiliary constable met with the Commanding Officer of the Division. As a result of this interview the clearance was restored and the Commanding Officer instructed that the auxiliary constable's suitability for re-engagement, which was regarded as a separate issue, now be reported on. The reply was that the auxiliary constable not be recommended for re-engagement. The reasons for this suggestion were given as follows:

- (a) Very reluctant to give a complete and accurate account of the original incident involving the internal investigation of members.
- (b) Conduct and attitude indicative of a union person and advocate. After discharge he endeavoured to collaborate with some auxiliary and regular members to better his position of appeal.
- (c) Discussion with the non-commissioned officer in charge of the auxiliary programme resulted in the recommendation that he would be detrimental to their auxiliary programme.
- (d) He displayed a dominant personality in that he worked his way to the position of Secretary of the auxiliary programme in the engaged twelve months and appeared most anxious to further the leadership role.

7. The auxiliary constable was advised by the R.C.M.P. Commissioner in a letter of the decision not to recommend him for re-engagement. He then approached the Member of Parliament, who complained to the R.C.M.P. This

complaint caused a further review of the files by two officers. The first one concluded:

On reviewing material available here it does seem that the auxiliary constable may have been treated unfairly. His security clearance should never have been a factor. He apparently committed no breach of conduct that was any worse than has been committed by regular members who were simply given an official warning. Points mentioned in the review to illustrate that the auxiliary constable was unsuitable over and above security clearance concerns dealt with, seem somewhat flimsy.

The second officer reported as follows:

Having thoroughly reviewed the reports of this investigation, there is no doubt in my mind that after the assault the members collaborated and decided to withhold evidence in an effort to protect one of the members. They obviously included the auxiliary constable in their decision and as a result this left him in the awkward position in that if he had told the truth, he would have been ostracized by the members of the detachment. Wrongly but understandably, he chose to follow the course of action which he had been prompted to follow by the other members in an effort to protect the member from disciplinary action.

Considering the unenviable position in which our members placed the auxiliary constable, I believe that he was too harshly dealt with, particularly in light of the penalties imposed on the regular members involved, and that any re-engagement application from him should be considered on its present merits, not on the incident which resulted in his dismissal.

8. Following this review, the R.C.M.P. Commissioner decided that the auxiliary constable could "re-apply to join the auxiliary programme with the complete assurance that past actions will have no bearing on his application". At the conclusion of our investigation, the former auxiliary constable had not re-applied.

Conclusions

9. We are in agreement with the last two investigating officers who concluded that the auxiliary constable was unfairly and too harshly treated. Had the basic principles of discipline, which call for uniformity of sanction in similar cases, been observed in this case, the auxiliary constable would not at this time find himself in the unenviable position of having to seek re-engagement. (Issues related to the internal disciplinary process and complaint procedure are reported on generally in our Second Report, Part X, Chapter 2).

DETAILED SUMMARY NO. 5

1. A citizen complained to us that three members of the R.C.M.P. had "forced their entry into and ransacked [his] home ...harassed [his] wife ...and did not bother to offer an explanation as to the motive of their search". He was not on the premises at the time and was therefore not personally involved.

2. The complainant had been under investigation by the Montreal Section of Customs and Excise regarding the importation of pornographic magazines into Canada. The two R.C.M.P. constables who conducted the search were accompanied by a reporter.

3. The R.C.M.P. conducted an internal investigation. The complainant would not permit the R.C.M.P. to interview his wife, and told the investigators that the members had not been impolite to his wife (contrary to his initial complaint). His only remaining complaint was that no reason had been given to his wife for the search.

4. The search had been conducted under the authority of a Customs Writ of Assistance. In an effort to avoid embarrassment for the suspect, and in compliance with Customs and Excise policy, the wife was not told that the search was for pornographic magazines, only that they were searching for illegally imported magazines.

5. The R.C.M.P.'s internal investigation brought to light the fact that the third person present during the search was a reporter who was writing an article on pornography and had approached the R.C.M.P. for assistance with his research. He had been given permission by an officer and a non-commissioned officer of the Force to accompany the constable during the search, as an observer only.

6. In the Customs Act, the powers of the Officer acting under a Writ of Assistance are specifically set out in section 139:

Under the authority of a Writ of Assistance, any officer or any person employed for that purpose with the concurrence of the Governor in Council expressed either by special order or appointment or by general regulation, may enter, at any time in the day or night, into any building or other place within the jurisdiction of the court from which such writ issues, and may search for and seize and secure any goods that he has reasonable grounds to believe are liable to forfeiture under this Act, and, in case of necessity, may break open any doors and any chests or other packages for that purpose.

7. The issuing section of the Customs Act reads as follows:

A judge of the Exchequer Court of Canada may grant a Writ of Assistance to an officer upon the application of the Attorney-General of Canada, and such writ shall remain in force so long as the person named therein remains an officer, whether in the same capacity or not.

8. Keeping in mind the provisions of the Customs Act, we feel that the journalist who accompanied the R.C.M.P. members was nothing but a trespasser. We consider that the conduct of the members who permitted him to accompany them was unacceptable. Quite apart from the legal issue raised by the trespass, we are of the view that a police officer should not enable any person not covered by a search warrant or Writ of Assistance to be in a position to violate the privacy of individuals.

DETAILED SUMMARY NO. 6

1. A Commission investigation was instituted at our initiative as a result of reading a newspaper article, sent to us by an uninvolved person concerning the conduct of several R.C.M.P. members during a homicide investigation. The article reported that a Provincial Court Judge, when discharging an accused at a preliminary inquiry, had said that some members of the R.C.M.P. had violated the Canadian Bill of Rights during their interrogation of the suspect but had not committed a criminal offence. We referred to this case in our Second Report, Part III, Chapter 10.
2. R.C.M.P. files disclosed that an R.C.M.P. internal investigation had been conducted into the conduct of the members involved.
3. A woman was taken to the R.C.M.P. offices by two R.C.M.P. corporals for questioning regarding the death of her common-law husband. A short time later, when she attempted to leave, she was placed under arrest and cautioned. The questioning continued from 7:00 p.m. until about 2:30 o'clock the following morning, when she was taken to a local hospital suffering from an overdose of a prescribed drug. She had apparently taken the pills in a washroom during a break in the questioning. She was released from the hospital at 9:45 that morning and returned to the R.C.M.P. offices where the questioning continued until about mid-day.
4. During the questioning the woman was not given the opportunity to consult counsel, although she had asked permission to call a lawyer on more than one occasion. She was not physically assaulted but was interrogated to the point of exhaustion. The questioning had been tape-recorded, and the internal investigation concluded that noises heard on the tape indicated the R.C.M.P. members were slapping her wrists to find out if she was awake or not.
5. The suspect was remanded for psychiatric examination. As no sheriff's officers were available, two members of the R.C.M.P. escorted her to the sheriff's office. While seated with one of the members, she saw a photograph of the deceased in the investigator's files and began to cry. There is no evidence that the incident was prearranged, but the members took advantage of the situation to question her again without the benefit of counsel.
6. The internal investigation also revealed that, although the accused had suggested the presence of her counsel, no counsel was present during a polygraph test conducted by a sergeant. Following the polygraph examination, the sergeant questioned her about the murder although her lawyer had been given an undertaking that this would not happen.
7. At the conclusion of the internal investigation, all members received an official warning which contained a detailed summary of the facts and concluded in all cases that they had used methods that were not considered acceptable interrogation techniques, and that constituted an infringement of the accused's rights under the Canadian Bill of Rights.

8. In all cases the members were sternly advised that incidents of this nature were not to recur, and that, if they did, more severe disciplinary action would be taken.

9. The subject of interrogation techniques in general, and this case in particular, are discussed in our Second Report, Part III, Chapter 10.

DETAILED SUMMARY NO. 7

1. A citizen, who was not personally involved, brought to our attention a well-publicized incident in 1972 relating to the escape of two convicted criminals from a penitentiary in Quebec. Basing his information on newspaper reports, he accused the R.C.M.P. of being responsible for the issuing, by the Department of External Affairs, of two false passports. This was said to have occurred as part of the R.C.M.P.'s attempts to recapture the two escapees.
2. During our investigation all available, relevant R.C.M.P. files were examined and members of the R.C.M.P. were interviewed, as were members of the Quebec Police Force who, in 1972, had had primary responsibility for the recapture of the convicts.
3. The facts uncovered by our investigation differed considerably from the information published in the news media, which the complainant relied upon to support his allegations. The following sequence of events was established.
4. In October 1972, the R.C.M.P. received information that the two escapees were planning to procure Canadian passports in Montreal. The R.C.M.P. arranged immediately for the source of that information to contact an officer of the Q.P.F. who was responsible for the recapture of the two wanted men. By the time the Q.P.F. took action, one of the escapees had already obtained a Canadian passport on the basis of a fraudulent application processed unwittingly by the Montreal Passport Office. The passport was delivered to a third person who had a letter of authority signed by the applicant.
5. The escapee was arrested in France the following March. He was held in custody awaiting trial on a number of serious charges, but managed to escape again in May 1978. In November 1979, he was killed in a police ambush. The Canadian passport was found in his possession and seized by French authorities.
6. When the second escapee applied for a passport about one week after the first, the Q.P.F. were on the alert. Because of the police inquiries into the circumstances surrounding the issuing of the first passport, the Montreal Passport Office recognized the second escapee's application, under an alias, to be fraudulent and refused to process it. However, the Q.P.F. insisted that the passport be issued, since they considered this to be the only real lead they had to recapture both escapees, whose whereabouts were then still unknown. Faced with the Passport Office's refusal, the Q.P.F. enlisted the help of the R.C.M.P. After discussions in Ottawa between a Deputy Commissioner of the R.C.M.P. and the Director of the Passport Office, the latter agreed to accede to the

Q.P.F. request and gave instructions to the Montreal Passport Office to issue the passport.

7. The issuing of the second passport, and its delivery to a third person, sparked a massive police surveillance operation in which the R.C.M.P. were not involved. Eventually the trail was lost because the passport was handed from one person to another, making it difficult for the police to maintain contact with the many suspects.

8. The second escapee was arrested by Q.P.F. and Montreal Urban Community Police in December 1972. The passport was not recovered. He claimed to have thrown it into a garbage can at a hotel in New York, as he did not want to be found in possession of a "hot" passport. In October 1974 he was killed in a shoot-out with the R.C.M.P. in Montreal.

Conclusion

9. It was not until December 1972 that External Affairs acknowledged that the R.C.M.P. had not participated in the issuing of the first passport, which was done unwittingly by the Montreal Passport Office. In so far as the second escapee's passport application was concerned, R.C.M.P. involvement was limited to interceding on behalf of the Quebec Police Force. The ultimate decision to process the fraudulent application and issue the passport was taken by External Affairs.

10. The Canadian Passport Regulations (SOR 73-36; PC 1973-17) passed pursuant to the Department of External Affairs Act (RSC-1970, ch. E-20) provide no guidance in determining the propriety of the actions taken in this case.

11. We therefore conclude that the facts inquired into as a result of this complaint do not indicate any conduct by members of the R.C.M.P. that was not authorized or provided for by law.

DETAILED SUMMARY NO. 8

1. In March 1979, a lawyer brought to our attention an incident in which he alleged that an accused person had been denied access to counsel. His complaint related to a citizen who, along with other persons, had been arrested on drug-related charges.

2. Following his arrest the accused was placed in the detachment cells. Some time thereafter he was allowed to speak to a lawyer, to whom he indicated that he wished to see counsel to discuss solicitor-client matters. After a series of police calls a local barrister agreed to see him.

3. When the barrister arrived at the R.C.M.P. offices, he was informed that the accused had been permitted to make a phone call but would not be allowed to see counsel until after completion of the investigation. Several unsuccessful attempts were made by the lawyer to talk to the accused by telephone. During

the evening, the accused was moved to another detachment. When counsel asked a member of the R.C.M.P. where the accused was, he was told that the member did not know but that he would try to find out from the Corporal in charge of the investigation. The member was apparently unable to contact the Corporal and the message was never passed on. From the time of his arrest on Friday morning until his remand on Monday morning, the accused was held at three different detachments.

4. After this complaint had been transmitted by us to the R.C.M.P., the R.C.M.P. conducted an internal investigation. The investigator concluded that "the defence lawyers were hampered in their efforts to consult with their prisoner clients after the original phone call between the accused and counsel had been allowed". The report also refers to "a definite breakdown in communications" between certain members of the R.C.M.P.

5. In June 1980, the Corporal was disciplined in the form of an official cautioning concerning his "failure to properly instruct general duty members at the Detachment relative to: (1) what specifically was taking place at the time of the arrests, (2) what action was to be taken relative to the persons arrested, particularly pertaining to phone calls they could or could not make or receive, (3) what access the arrested persons were to have to counsel ...". Finally the Corporal was advised that "repetition of this type of occurrence will not be tolerated and will be dealt with more severely".

6. The question of access to counsel and a study of R.C.M.P. policy in this area may be found in our Second Report, Part III, Chapter 10 and Part X, Chapter 5.

DETAILED SUMMARY NO. 9

1. A Canadian company with numerous subsidiaries and international affiliations, engaged mainly in the exploration and exploitation of natural resources in Canada and abroad, together with an international shareholders committee, submitted several allegations of R.C.M.P. wrongdoings to us, supported by massive documentation. The allegations were as follows:

- (a) The R.C.M.P. investigation to which they were subjected was politically motivated by and on behalf of a provincial government;
- (b) There had been abuse of the criminal process through the unlawful and improper retention of company material seized in the execution of search warrants at company and affiliate offices, thereby paralyzing the operations of the company;
- (c) A foreign regulatory agency had been given access to seized documents, unlawfully and improperly, for the purpose of enabling that agency to recommend trading suspensions;
- (d) Witnesses and members of the company's executive had been intimidated and harassed thereby forcing several of them into dissent and causing a split in the direction of the company;

(e) There had been illegal communication intercepts and unauthorized disclosure of information so obtained to members of a foreign regulatory agency.

2. Our investigation consisted of personal interviews by our staff with a number of individuals, including two of the R.C.M.P. members assigned to the Force's long and complicated investigation, as well as an examination of approximately 55 volumes of R.C.M.P. files.

3. The R.C.M.P. investigation into the company had been prompted by a request from a provincial minister who suspected illegalities in the granting of a timber concession to a foreign company by a former government official. It appears that no statutory authority existed for this transaction. In 1969, the concession was sold to the complainant company for \$4,000,000.

4. The second phase of the R.C.M.P. investigation concerned the circumstances under which, in 1970, the company purchased two buildings located on a former U.S. Air Force Base for \$250,000 when their value was assessed at \$8,150,000. This deal was found to have been authorized by the former government official in his capacity as the acting Minister of Public Works. After making only one payment of \$100,000 in 1971, the company was said to have indicated its willingness to reconvey the two buildings to the provincial government for \$650,000. When this price was challenged, the company claimed that it represented their total investment because \$550,000 worth of shares had been issued to a third party in connection with the building transaction.

5. The investigation eventually uncovered sufficient evidence to justify the laying of charges of fraud against the president of the company, and charges of breach of trust against a former provincial Minister, since deceased. The president of the company was arrested on a warrant but obtained bail under conditions which precluded his leaving the province. Because of a long delay in bringing the case to trial, the president of the company succeeded in obtaining a new bail hearing, at which all restrictions on his freedom of movement were lifted. His passport was returned to him and he immediately left Canada for a Central American country, of which he became a citizen and no longer extraditable. A Warrant of Arrest and charges are still outstanding. He was reported to be also the subject of an outstanding arrest warrant in the United States, as a result of skipping bail in 1965.

6. The third phase of the R.C.M.P. investigation resulted in 406 charges of fraudulent stock manipulation (known as "wash trading") under section 340 of the Criminal Code, being preferred against the president and seven other persons. Of these persons, only one has been tried. He pleaded guilty to 184 charges and was fined \$25,000. All other accused have remained outside Canada and charges against them are still before the courts.

7. The first phase of the R.C.M.P. Commercial Crime investigation had to be abandoned in 1978, because of lack of cooperation on the part of certain European authorities, and the refusal by banking organizations in those countries to provide essential evidence of deposits in numbered accounts.

8. In the course of our investigation we uncovered no evidence to substantiate allegations (a), (b), (d) and (e). As far as allegation (c) is concerned, documentation as well as information provided by senior R.C.M.P. investigators appeared at first to be somewhat confusing and contradictory. The involvement of a foreign regulatory agency was admitted but only in so far as cooperation was necessary in areas of mutual interest and concern. Specific access to any of the material seized from the complainant company in the execution of search warrants, though sought by the agency, was denied. The foreign agency was invited to apply to the court having jurisdiction in accordance with criminal code procedures. However, the R.C.M.P. officer who had the overall responsibility for the investigation between 1972 and 1975, indicated that, during that period, investigators of the foreign agency were permitted to look at certain records, which had been seized under search warrants, to enable the agency to check into the trading activities of that company and of individuals associated with it, in the foreign country. This was done without the permission of the court which may be obtained pursuant to section 446(5) and (6) of the Criminal Code. Fontana in his book of *The Law of Search Warrants in Canada*,¹ in what appears to be his own interpretation of the section, implies that such a permission must be obtained in all cases where goods obtained under a search warrant are to be examined by any party having an interest.

9. Although of no direct concern to us because of its civil nature, another action taken in respect of the complainant company had certain ramifications which were looked into. In March 1977 the Restrictive Trades Practices Commission, Ministry of Consumer and Corporate Affairs, ordered an investigation into the business activities of the company with a view to determining what effects the continued control of the company by the President and associates from abroad, through a partisan Board of Directors, was having on its financial standing and the interests of its shareholders. This investigation is still going on.

10. In conjunction with this investigation, assistance and cooperation were sought from and given by the R.C.M.P. in the matter of documentary evidence relevant to both civil and criminal proceedings. This was challenged by the company in a claim filed in the Federal Court of Canada in 1978, which was subsequently dismissed. A number of hearings were held, the latest one on July 23, 1980. On this occasion, sworn testimony was taken from the R.C.M.P. officer in charge of the investigation with particular reference to the disposition of company material under seizure. In answer to a specific question, he categorically denied that anyone had been allowed access to any record that was not the property of that person.

11. Based on the transcript of these proceedings, the complainant company, through its counsel, immediately filed a complaint of perjury with the Attorney-General of Ontario. This complaint is currently the subject of an investigation by the Ontario Provincial Police.

¹ James A. Fontana, *The Law of Search Warrants In Canada*, Butterworths, Toronto, 1974.

12. Concurrently, the former government official has approached the Solicitor General of Canada, on essentially the same issue. He demanded an investigation into what he alleged were leaks of information by the R.C.M.P. to the media, relative to the investigation under section 114 originating from documentation under seizure, which he said constituted an attempt to create prejudicial publicity against him and others.

13. In view of the fact that specific issues raised by the complainant company and its shareholders committee have now been brought to the attention of the competent federal and provincial authorities, and that any resultant actions are likely to go beyond the life span of this Commission of Inquiry, we have not pursued a full investigation. Although in all other aspects the R.C.M.P. investigation appears to have been conducted in accordance with the authority and provisions of the law, we do find it difficult to understand why the R.C.M.P. permitted a foreign agency to inspect records under legal seizure without the permission of the court, as may be granted pursuant to section 446(5) of the Criminal Code. The scope and ambit of section 445 need clarification. A rigid interpretation would lead to situations where goods seized under warrant could not be shown to their owner for identification without a court order. Another possible interpretation is that the officer in charge of the seized goods has complete discretion in determining who may examine the goods in question. Under this interpretation, court permission must be obtained only in those cases where the custodian of the documents does not wish to allow examination. The court order is then used to force production. We consider that the uncertainty as to the meaning of section 445 should be clarified by legislative amendment.

DETAILED SUMMARY NO. 10

1. This complaint was received from a lawyer who represented five families who alleged that they were physically abused and that their property had been damaged by members of the R.C.M.P.

2. This case received wide publicity in the news media and representations were made to the Federal Solicitor General and the Provincial Attorney General. Our investigation permits us to draw a picture of the facts as follows.

3. An R.C.M.P. sergeant received information that a confrontation was to take place between a group of juveniles and members of another local group. He was also told that, to prepare for this encounter, the juvenile group had obtained restricted weapons, which were stored in their homes. The sergeant obtained warrants to search the residences of nine of the juveniles.

4. One morning at 5:00 o'clock the sergeant, accompanied by five R.C.M.P. members armed with two shotguns and a sledge hammer, began a systematic search of these homes. Two members guarded the back door while four members entered by the front. The only items located and seized during the first five searches were a starter pistol, a small amount of ammunition, a knuckle duster and a small cedar club. The sergeant then cancelled the remaining four searches.

5. In one home an altercation occurred between a female occupant and the sergeant, when the female, in attempting to strike the sergeant, missed and knocked off his hat. The sergeant retaliated by slapping the woman in the face and later charged her with assaulting a police officer. The charge was subsequently withdrawn in court by the Prosecutor on orders from the Deputy Attorney General of the Province. Later the same day, occupants of the premises that had been searched complained that their front doors had been smashed, their furniture and personal property damaged and their homes left in disarray.

6. The R.C.M.P., following an internal investigation, imposed disciplinary sanctions on the sergeant in the form of an "official warning" and he was transferred from his command post to a subordinate role in a large municipal detachment. The sergeant appealed to the Division Review Board. The appeal was allowed and the disciplinary sanction removed.

7. The sergeant was then officially given an amended warning and he again appealed to a second Review Board. This Board vindicated the sergeant in the matter of legality and procedure of the searches but found him guilty of errors in judgment in his evaluation of manpower, the timing of the searches and the carrying of shotguns. The Board recommended that, as his transfer had been punitive in nature, the official warning be removed and that he be constructively counselled. He was counselled and the investigation was completed.

8. Enquiries and interviews by our investigator confirmed that all the facts and circumstances in this case were revealed by the internal investigation. The disciplinary action taken by the Force properly concludes this matter.

DETAILED SUMMARY NO. 11

1. A complainant wrote to this Commission to advise that he had personal knowledge that R.C.M.P. members were involved in illegal acts.

2. During an interview, the complainant related that on his release from prison after serving three years for various criminal offences, he met an individual, whom we shall call Mr. Z, and joined him in a business venture.

3. The complainant stated that Mr. Z, a former member of the R.C.M.P., was also a licensed bailiff and a personal friend of two serving members. The complainant alleged that Mr. Z, after repossessing vehicles in his capacity as a bailiff, was tampering with the speedometers before reselling them and that the two R.C.M.P. members were aware of this and condoned it.

4. The complainant also alleged that the two members, while on duty, would stop vehicles and, if the vehicle was wanted for repossession, would detain the driver until Mr. Z arrived at the scene to execute the court order to repossess. For this service, it was alleged, the members would receive \$50 per vehicle.

5. The complainant claimed that he had related his concerns to members of the Commercial Crime Section but that no corrective action had been taken.

6. The investigation conducted by our staff revealed that Mr. Z is not, and never has been, a member of the R.C.M.P., that the two members were not his personal friends and that there is no basis for the allegations that the two members were aware of and condoned speedometer tampering and that they were involved in detaining drivers of vehicles so that Mr. Z could execute the court orders.

7. The allegation that the R.C.M.P. Commercial Crime Section took no corrective action on the complaint was also unfounded. It was established that the complainant had been an informant for the R.C.M.P. The R.C.M.P., realizing that he was untrustworthy and difficult to control, dismissed him. Through another informant, the R.C.M.P. were successful in obtaining evidence which led to six counts of theft, four of fraud, two of forgery and two of uttering being laid against Mr. Z, and eight of speedometer tampering being laid against a business associate of Mr. Z.

8. The making of this complaint to us affords a good example of a person seeking revenge on the R.C.M.P., attempting to use an independent inquiry as his vehicle. It is interesting to note that part of the complainant's allegation is well-founded, in that speedometers were being tampered with. However, the allegation of impropriety on the part of members of the R.C.M.P. proved to be unfounded.

DETAILED SUMMARY NO. 12

1. In a brief submitted to us by a labour organization, comment was made about the harassment of a medical doctor in Nova Scotia by members of the R.C.M.P. The case had received wide-spread publicity and was the subject of a Nova Scotia Public Inquiry, presided over by His Honour Provincial Court Judge Leo MacIntyre (the "MacIntyre Inquiry"). The existence of the provincial inquiry prompted us to limit our investigation to an examination of the provincial commission's records and R.C.M.P. files, and an interview with the doctor's lawyer.

2. The MacIntyre Inquiry looked into the doctor's allegations which covered the period from 1971 to the time of that Inquiry. The allegations were as follows:

- (a) harassment by the R.C.M.P.;
- (b) the unwarranted laying and prosecuting of charges under the Criminal Code of Canada; and
- (c) an unwarranted continuing investigation by the R.C.M.P.

3. Testimony about the strained relationship between the doctor and some members of the R.C.M.P., which began in the late 1950s, was heard by the MacIntyre Inquiry as a preamble to the study by the Inquiry of the following four incidents:

- (a) alleged illegal entries at a medical centre operated by the doctor;
- (b) an assault charge against the doctor involving a member of a motorcycle gang;

- (c) a medical insurance fraud investigation involving the doctor; and
- (d) an abortion investigation involving the doctor.

We shall discuss each of these in the same order:

- (a) The evidence revealed that four entries took place at the medical centre in 1973-74. In one case, drugs were stolen while in the others the office was ransacked, files disturbed and the photocopying machine used. The Inquiry concluded that the R.C.M.P. were not involved in any illegal entries made to the medical centre premises.
- (b) In August 1971, members of a motorcycle gang visited the medical centre seeking aid for one of their group. An altercation took place between the doctor and one of the members, resulting in charges of assault being laid against the doctor. The Inquiry found that there was no harassment of the doctor or unwarranted laying and prosecuting of charges in this instance, but did conclude that the whole investigation of this incident left much to be desired and could not be classed as sound police procedure.
- (c) In 1973, a medical services insurance investigation was initiated by the R.C.M.P. Searches were conducted at the medical centre and at the doctor's home. No charges were ever preferred against the doctor. The Inquiry found that the overzealous manner in which the investigation was carried out constituted harassment of the doctor. In his report, Judge MacIntyre said that the searches were more in the nature of a fishing expedition than proper searches, and that the matter brought little credit to the R.C.M.P.
- (d) In June 1978, following an R.C.M.P. investigation, charges of abortion were preferred against the doctor and an associate. The matter was dismissed at the preliminary inquiry in September of that year for lack of sufficient evidence. The MacIntyre Inquiry found in this instance that there was no harassment of the doctor, no unwarranted investigation or laying and prosecuting of charges. During the preliminary inquiry a listening device, which the doctor said he found at the medical centre, was entered as an exhibit. This exhibit, along with others, were given over to an R.C.M.P. constable by the court for safe keeping. The constable later gave the device to an R.C.M.P. officer for examination, and the officer then testified it was not the type used by the Force. The MacIntyre Inquiry was critical of the R.C.M.P. for permitting an exhibit to be examined without the authorization of the court.

4. We express no opinion and make no finding about this case. It is a matter on which we are reporting solely on the basis of the results of the provincial Inquiry and the presentations made to it by the R.C.M.P. so that the Governor in Council may be made aware of: (i) the types of problems that can arise when the relationships between certain members of a detachment and the community they serve go sour; (ii) the inherent jurisdictional problems which necessarily arise from contract policing, relating to control by discipline and other means over members involved in that work; (iii) the problems which a federal review body (such as our Commission of Inquiry or the Inspector of

Police Practices whose creation were recommended in our Second Report) involved in the examination of complaints against a federal police force operating on provincial territory inevitably encounters. Those subjects are reported on in our Second Report, Part V, Chapter 8 and Part X, Chapter 2.

DETAILED SUMMARY NO. 13

1. This allegation was brought to the attention of one of our investigators while he was conducting enquiries into an unrelated matter. The concern was whether the R.C.M.P. had been involved in any way with a break, enter and theft which had occurred at a provincial minister's office.
2. Enquiries by our staff confirmed that someone had entered the office by breaking the glass in the front door, used a key to enter the main office, forced open an inner door, and then forced open the filing drawers and stolen some files.
3. The local police department's investigation revealed that two different government agencies were located in the same building, and that an atmosphere of hostility existed between the two sets of employees. The theory of the police investigators was that an employee of the agency that was not victimized gave the key to the culprit(s) or committed the crime himself.
4. The police reports show that, on a date not recorded, one of the detectives received a telephone call from the R.C.M.P. (name of member unknown) to the effect that the person responsible for the break, enter and theft was [person named] but that the R.C.M.P. member requested that the detective not approach the suspect as the suspect, if approached, would immediately identify their informant. Further enquiries were conducted by the local police but the suspect was not interviewed and the case, although unsolved, has been closed.
5. Our investigator interviewed the local police detective who received the telephone call from the R.C.M.P. but he was unable to identify the caller. The R.C.M.P. corporal who forwarded the telex message to Ottawa, when interviewed, could recall the occurrence but could not remember who informed him or who he informed but is confident he did not advise the police department in question. The suspect named by the R.C.M.P. was interviewed by our staff and vehemently denied committing the criminal offence but readily admitted being aware of the incident.
6. In addition to the above, our staff interviewed numerous other persons, looked at relevant R.C.M.P. files and conducted other inquiries. From the information available we conclude that the R.C.M.P. were not directly or indirectly involved in this occurrence.

DETAILED SUMMARY NO. 14

1. The owner of an aviation company complained that the manner in which the R.C.M.P. conducted a Customs Act investigation concerning the purchase and licensing of an aircraft by him "represented nothing more than bureau-

cratic Gestapo tactics". The aircraft had been imported from the U.S.A. and, because of the owner's declaration, was regarded as "class 4 Charter Commercial Air Service" and therefore was exempted from federal sales and excise tax.

2. Two years later, when the complainant was piloting the plane, it crashed. An R.C.M.P. Customs and Excise Branch investigation revealed that his passenger, a friend, had been a non-revenue passenger, a fact which constituted a violation of the tax exemption conditions.
3. The aircraft wreckage, was seized by the R.C.M.P. under the provisions of the Customs Act although the R.C.M.P. never actually took physical possession of it. No charges were laid against the complainant but arrangements were made by him to pay the required duty and a penalty to Revenue Canada.
4. Later, the R.C.M.P. wrote to him indicating that a further penalty equal to the taxes was being assessed. Information had come to the attention of the R.C.M.P. that he had never used the aircraft commercially and that he had boasted how he had obtained it without paying the required taxes.
5. In March 1979 a representative of Revenue Canada advised the R.C.M.P. that the penalty assessed did not fall within Revenue Canada guidelines. Based on a legal interpretation of certain words it was felt that section 58 of the Excise Tax Act and the provisions of the Customs Act did not apply. It was therefore suggested that the seizure action be withdrawn and that the order prohibiting disposal of the aircraft be lifted.
6. Following receipt of this information, R.C.M.P. Headquarters sent a telex dated March 30, 1979, to the Customs and Excise Section of the local R.C.M.P. advising that there appeared to be no need to pursue this investigation further, that the file could be concluded and the order lifted.
7. It was not until May 22, 1979, that the R.C.M.P. wrote to the complainant that the order had been lifted and that the seized aircraft was being released to him. It was not until our investigator read this letter and discussed with members of the R.C.M.P. Task Force that the Force sent a further letter to the complainant indicating clearly that no other monies were owing as a result of the seizure.
8. Our investigation in this matter consisted of interviews with the complainant, a review of R.C.M.P. files and discussions with a member of the R.C.M.P. Task Force. The local members were not interviewed.
9. In our opinion, the R.C.M.P. had every reason to investigate in this case and did so properly. Our concern is with the delay by the local R.C.M.P. officers in advising the complainant after they had been told by Headquarters in Ottawa to conclude their investigation and lift the order. There seems to have been no acceptable reason for the delay.

DETAILED SUMMARY NO. 15

1. An ex-member of the R.C.M.P. made a number of specific accusations with references to members of the R.C.M.P.: (1) arson; (2) surreptitious entries; (3) perjury; (4) indecent assaults; (5) excessive force used during an arrest; and (6) the use of influence to have him dismissed from a position with a government which he filled after his service with the R.C.M.P. The facts arising out of each allegation will be dealt with in the order of the allegations just listed.

Arson

2. The ex-member alleged that R.C.M.P. members committed arson in a total of three instances. Our staff investigation established that two of these allegations are completely unfounded while the third has been the subject of a thorough R.C.M.P. investigation. In this third case, the R.C.M.P. identified three serving members as suspects, but the Force lacked sufficient evidence to substantiate criminal charges. The Force, however, charged the three members with numerous offences under the R.C.M.P. Act. The members pleaded guilty to all charges and the hearing officer fined them and recommended their discharge. The members appealed and the appeal was denied. The Commissioner then intervened, recommending the members not be dismissed. He ordered that the two senior members be reduced in rank from 1st class to 3rd class constables and immediately transferred to places far from the locations to which they were then posted. The third member, who was on probation, was ordered transferred from his post to another division and placed under close supervision. His promotion to second class constable was not to take place without the Commissioner's approval. Prior to transfer, all members were paraded before the Commanding Officer and told that they were being retained on strength on a probationary basis and if they did not meet full expectations they would be subject to immediate dismissal. All members were transferred from that district and at the time of our investigation all were still members of the Force.

Surreptitious entries

3. Inquiries disclosed that in 1970, following a serious criminal offence and after an exhaustive investigation, R.C.M.P. members entered four residences to install electronic listening devices. In each instance they had to enter the premises to remove the devices when they were satisfied they no longer served a useful purpose. In each case the members received authorization from the appropriate superior officer before proceeding with the installation. These procedures are typical of the electronic surveillance conducted before July 1, 1974, discussed by us in our Second Report, Part III, Chapter 3. Our analysis of the legal issues in such cases may be found in that Report.

Perjury

4. The allegation of perjury was found to be an isolated case which is reported to have occurred during an in-service court hearing. The incident had already been reported to superior officers who had ordered an immediate internal investigation which found that the complaint was without merit.

Indecent assaults

5. The ex-member told our investigator that the complaint that a member of the R.C.M.P. indecently assaulted two women had been made to him by one of the alleged victims. He admitted that he tried to obtain the name of the second victim without success. This complaint has been the subject of an internal investigation by the R.C.M.P. When this investigation began, counsel for the woman who complained to the ex-member informed the R.C.M.P. that the woman did not have a complaint and did not want the matter pursued. The R.C.M.P. investigator thus was unable to prove or disprove this allegation and the investigation terminated. Our investigators faced with similar lack of co-operation from witnesses, could not prove or disprove the allegation.

Excessive force used during an arrest

6. The concern that the R.C.M.P. used excessive force when making an arrest centered around an incident in which two members attempted to arrest a person for a minor provincial offence. Other persons at the scene interfered with the members, and the end result was that the members shot one of the interfering persons, four or five times. The R.C.M.P. members, fearing reprisals, then left the scene and radioed for an ambulance and back-up assistance. Before the arrival of the ambulance the injured person was taken to hospital by private car. The injured person recovered and was charged, along with others, with criminal offences. The R.C.M.P., on completion of its investigation, conferred with counsel for the provincial Attorney General. The Attorney General recommended that the members not be charged with any criminal offences. The investigating member, satisfied that the two members believed on reasonable and probable grounds that the force used by them was necessary to protect themselves from possible harm or grievous harm, recommended no disciplinary action. Since this incident has been looked at by the provincial Department of the Attorney General and was subject to an internal investigation by the Force, coupled with the fact that civil actions by the victims against the two members are still before the courts, no comment or conclusion as to the actions of the members will be made.

The use of influence to cause his dismissal from a position with a government

7. The ex-member's allegation that a senior R.C.M.P. member influenced a government official in a way which led to the termination of the employment of the ex-member proved unfounded. Inquiries by our investigator revealed that a meeting had taken place between the senior R.C.M.P. member and the government official but both denied that it led to the dismissal. The government official, when informed by the R.C.M.P. of the allegation made to us, wrote directly to the Commissioner of the R.C.M.P. to assure him that the senior R.C.M.P. member had not influenced his decision to terminate the employment of the ex-member. We conclude there was no impropriety on the part of the senior R.C.M.P. member.

8. Some of the concerns raised by the ex-member proved to have been well-founded. In each case, however, where a serious complaint became known to the senior administration of the Force, an internal investigation had been ordered. In these instances a thorough and competent investigation had been conducted and the recommended action taken. Our inquiries into these incidents confirmed that the concerns of the ex-member were properly investigated immediately after they became known by senior R.C.M.P. management.

DETAILED SUMMARY NO. 16

1. The complainant wrote to us alleging that certain members of the R.C.M.P., while conducting a search at his residence, mistreated his family by:

- (a) holding them under arrest for 18 hours;
- (b) handcuffing one member who was a juvenile and interrogating him without the presence of his parents;
- (c) refusing to allow them to contact their lawyer; and
- (d) using an unreasonably large number of members to conduct the search.

2. An investigation by our staff disclosed that the police search had been prompted by information received that marijuana was being cultivated and processed on the complainant's farm. The search of the farm resulted in the seizure of 3353.3 grams of marijuana as well as 36 plants from an abandoned building. A person (not related to the complainant's family) was subsequently arrested, charged with trafficking and, on conviction, received a sentence of 18 months imprisonment.

3. Aside from the convicted person, four others were at the complainant's farm at the time of the raid. Two of these were sons of the complainant and the other two were the wife and foster son (a minor) of one of the sons. The wife at that time was pregnant.

4. The complainant's property was searched by six R.C.M.P. members and two provincial police force officers. The four members of the complainant's family remained with the police during the search, following which all were arrested and transported to an R.C.M.P. detachment office and a city police station for further interrogation and fingerprinting. When it was established to the satisfaction of the investigating officers that the building and fields where the marijuana was found had been "verbally" leased to the convicted person and a rural co-operative for the cultivation of vegetables, all members of the complainant's family were released.

5. As a result of complaints received, the R.C.M.P. conducted an internal investigation. At the conclusion of their inquiry, the Officer in Charge of Administration and Personnel, in a memorandum to the Officer in Charge of the Federal Policing Branch, stated:

Our investigation revealed our members [under the direction of a Corporal] acted according to normal procedures under the circumstances, however, did show, to a minor degree, some lack of judgement when dealing with the

young pregnant girl, the requests for breakfast and permission to make a telephone call to a lawyer as well as handcuffing a juvenile. For these reasons, the Corporal in charge was counselled with a view of avoiding situations which may lead to similar complaints in the future.

6. It would appear from the memorandum quoted that the Corporal in charge was disciplined for his conduct when in fact he was not. According to the R.C.M.P. administration manual, chapter II.13, under the heading Complaints and Discipline, section I.1.b, "Counselling does not have a disciplinary connotation". The complete section reads as follows:

When a first line supervisor believes that disciplinary action is unwarranted, he may impart advice or guidance by orally counselling a member. (Counselling does not have a disciplinary connotation.) However, the supervisor's officer or commanding officer may initiate disciplinary action if necessary.

1. Supervisors should record counsellings in a performance log and may include reference to them in performance evaluation and interview reports when necessary.

2. Supervisors will:

(a) report counsellings resulting from substantiated complaints, unjustified use of firearms, and police motor vehicle incidents, e.g., Category "D" accidents;

(b) if counsellings do not have the desired effect, report prior relevant counsellings and recommend disciplinary action.

7. We find that the Corporal and other R.C.M.P. members used poor judgment in:

- (a) keeping the pregnant woman and her juvenile son under arrest for 11 hours;
- (b) handcuffing and fingerprinting the juvenile male; and
- (c) failing to allow the suspects access to their counsel

and in our opinion they should have received some form of discipline.

8. The areas of concern identified in this case have been explored in our Second Report:

(a) The fact that no disciplinary action was taken points out the need for an Inspector of Police Practices to monitor the handling of complaints of police conduct. Our recommendations in this area may be found in Part X, Chapter 2.

(b) A discussion of the right to counsel may be found under Part X, Chapter 5.

(c) We looked at certain methods of criminal investigations and their control in Part X, Chapter 5.

DETAILED SUMMARY NO. 17

1. A complainant wrote to us to bring to our attention an incident in which he believed a member of the R.C.M.P. acted improperly. The concern arose from the member, acting in his personal capacity, having written to a provincial Director of Prosecutions on R.C.M.P. letterhead recommending the withdrawal of a book from the library of a school which his child attended. The Director of Prosecutions, believing that the concern was an official request from the R.C.M.P., ordered the removal of the book.
2. The complainant originally voiced his concern in a letter to the federal Solicitor General and requested to know what disciplinary action, if any, was taken against the member concerned. The Solicitor General replied that "it is the policy of the Royal Canadian Mounted Police not to release such details. Internal disciplinary measures are considered to be confidential". This letter, in our opinion, would lead one to believe that some form of disciplinary action had been taken against the member when in fact such was not the case.
3. Enquiries by our staff revealed that during an internal investigation by the Force, the offending member admitted using the R.C.M.P. letterhead but said that he wrote the letter strictly on a personal basis and as a concerned parent. A high-ranking R.C.M.P. officer reached the conclusion that the indiscretion on the part of the member did not warrant disciplinary action. The member was, however, informed that the use of Force letterhead for personal communication must cease forthwith.
4. We are satisfied that the member was counselled but, according to the R.C.M.P. Administration Manual, counselling does not have a disciplinary connotation. The letter to the complainant, drafted by the R.C.M.P. and bearing the Solicitor General's signature, was therefore misleading as it erroneously left the impression that the member had been disciplined when he had not.

DETAILED SUMMARY NO. 18

1. This case was drawn to our attention by two disinterested persons acting independently of each other. Two issues arise:
 - (a) The first is the procedure which was used by a member of the R.C.M.P. to secure the release of an accused person under section 460 of the Criminal Code. The corporal had applied to a magistrate in one case, and to a single Justice of the Peace on two occasions (contrary to section 460 which requires that two Justices of the Peace act in a case such as this) for the release of the prisoner to further a murder investigation. The corporal testified to this effect at trial. In other words, the real reason for the release was not one which is permissible under section 460, which provides that a magistrate may order that a prisoner be brought before a court for his preliminary inquiry or trial or to give evidence. The corporal also testified that each time he made an application for the accused's

release, he explained to the Magistrate or the Justice of the Peace, as the case may be, that while the order would show that the prisoner was needed to appear as a witness, in fact he was required for other purposes. As a result of an investigation by the provincial attorney general's office into this matter, it appears that the corporal did not mislead the Magistrate or the Justice of the Peace. Our knowledge of the facts in this case was obtained from an examination of R.C.M.P. files and court transcripts. We did not interview the judge or the Justice of the Peace.

- (b) On one occasion the corporal secured the release of the accused under section 460 for the purpose of having him submit to a polygraph test, a purpose not covered by the section. Before the test, which was conducted under the supervision of a sergeant, the accused (a boy of 17 or 18) asked to talk to his lawyer. This request was first made to the sergeant, who refused it. The sergeant testified in court that he could not accede to the accused's request because to do so would be to risk the prisoner's escape. It seems somewhat paradoxical, however, that the sergeant later found it acceptable to accompany the accused to a bathroom at a distance that was considerably greater from the interview room. In any event, the accused persisted in his request for counsel. The sergeant was successful in talking the prisoner out of his request to speak to his lawyer by giving him to understand that the corporal himself would talk to the lawyer while the examination was taking place. The corporal never did call the lawyer.
2. Following the publicity given to this case, the associate deputy attorney general of the province concerned instructed all Crown counsel, chiefs of police and the R.C.M.P. of the practice to be utilized thenceforth and the requirements of section 460 of the Criminal Code. The instructions issued required strict compliance with section 460. The question of the improper use of section 460 in this case has therefore already been examined by the responsible provincial authorities. The R.C.M.P. advised us that they have not made any representation to the government to have the relevant provisions of the Criminal Code altered or amended. This concern, however, was raised and discussed during a meeting of the Uniform Law Conference in 1978.
3. The federal Department of Justice advised us that there are now no provisions, whether in the Criminal Code or elsewhere, whereby a prisoner may be released into the custody of the police, other than in the circumstances specified in section 460. The lack of authorizing provision has caused concern both to the police and to Crown officials. The Department has received requests from various provincial departments of the attorney general to have section 460 amended. At the present time, consideration is being given to amend the section so that a judge would be empowered to authorize the transfer of a prisoner to the custody of a peace officer where the judge is satisfied that such a transfer is required for the purpose of assisting a peace officer acting in the execution of his duties. As there appears to be a serious gap in this regard in the relevant statutes, we recommend that the matter be examined by the Law Reform Commission of Canada.

4. The second portion of this complaint illustrates the need for an Inspector of Police Practices to monitor complaints of police misconduct. Our recommendations in that regard may be found in the Second Report, Part X, Chapter 2.
5. The propriety of refusing to allow the accused access to counsel was discussed in the Second Report, Part X, Chapter 5, in a section entitled "Interrogation Techniques".

DETAILED SUMMARY NO. 19

1. This allegation came to our attention through a newspaper editorial in which it was reported that a person had been arrested on a warrant but had not been brought before a Justice of the Peace within 24 hours or at the first opportunity, as required by section 454 of the Criminal Code of Canada.
2. Investigation by our staff confirmed that a person had been arrested by the R.C.M.P. on a charge of impaired driving. This person failed to appear to answer to the charge and a Bench Warrant was issued. Over a year later this person was arrested on the Bench Warrant and lodged in the local detachment cells. He remained in the cells for six days before appearing before a Justice of the Peace, who then remanded him for a further eight days.
3. The accused, through his lawyer, made a motion to the Provincial Judge to stay the proceedings, arguing that the failure of the police to bring the accused before a Justice of the Peace as required by section 454 constituted an abuse of process. The judge dismissed the motion. The accused appealed unsuccessfully to the provincial Supreme Court. He then appealed to the provincial Court of Appeal where he was also unsuccessful.
4. The R.C.M.P. admits that section 454 of the Criminal Code was not complied with in this case, because, it is said, of an oversight. We find, having had the opportunity to review numerous allegations and complaints, that this appears to be an isolated incident.

DETAILED SUMMARY NO. 20

1. The complainant in this case is a lawyer who alleged that an R.C.M.P. corporal prejudiced his client by turning over transcripts of intercepted private communications, which had not been tested in the courts, to Canadian immigration officials. The lawyer alleged also that the same R.C.M.P. member attempted to coerce a citizen into testifying against his client by accusing the citizen of bigamy.
2. The client, an immigration officer, was the subject of a joint police investigation following receipt of information by his superiors that he had accepted bribes and had been involved in frauds upon the government.

3. During the investigation, a municipal police force involved in the investigation obtained judicial authorization for electronic interception of the private communications of the immigration officer and four other area residents. Some four months later the R.C.M.P. corporal preferred charges under the Immigration Act against the immigration officer and an area resident who was sponsoring members of his family as permanent residents. The immigration officer was suspended from duty.

4. In an effort to support the suspension the immigration officer's superior requested information from the R.C.M.P. corporal. After consulting with Crown Counsel, the corporal released the transcripts of two conversations which were considered pertinent to the immigration proceedings. These were never produced or directly referred to at the immigration officer's grievance hearing.

5. During the investigation the R.C.M.P. corporal interviewed the owner of a business establishment at Toronto International Airport. According to the lawyer who wrote to us, it was during this interview that the Corporal attempted to coerce him into testifying against the immigration officer by accusing the businessman of bigamy. The R.C.M.P. corporal, when interviewed by our staff, said that he established that the businessman had committed the offence of bigamy and charged him accordingly. He denied having attempted to coerce the witness. Later, following consultation with Crown Counsel the charge of bigamy was withdrawn.

6. With respect to the allegation that the R.C.M.P. corporal attempted to use the bigamy charge to coerce the businessman into testifying against the immigration officer, we cannot resolve the discrepancies between the conflicting stories of the member and the businessman. We therefore make no finding in this regard.

7. With respect to the allegation that the R.C.M.P. corporal unlawfully delivered a tape recording, or portions of a transcript of a tape recording, of a conversation which had been intercepted under section 178 of the Criminal Code pursuant to judicial authorization, there is a difficult issue involving the interpretation of sections 178.16(3.1), 178.2(a) and 178.2(b) of the Criminal Code. There is a lack of clarity in these provisions, in circumstances such as those disclosed to the Commission. In view of the fact that the corporal acceded to the immigration supervisor's request only after obtaining the advice of counsel for the Crown, we consider it undesirable to reach a conclusion as to whether the law permitted him to do that which he did. The statute should, however, be examined by the Department of Justice, to determine what legislative clarification is necessary.

DETAILED SUMMARY NO. 21

1. The complainant in this case wrote to us alleging mistreatment by the R.C.M.P. following his arrest and conviction on a drug-related offence. He was arrested by the R.C.M.P. at an international airport. The R.C.M.P. confiscat-

ed hashish and personal property which included his eyeglasses, passport and bank bonds. He complained that the R.C.M.P. did not return his property following his arrest, and that his wife, who lived outside Canada, suffered because of this.

2. Counsel for the complainant wrote to the R.C.M.P. following his conviction, requesting the return of his personal property, including the bonds which were valued at approximately \$10,000. Since the bonds had been entered as an exhibit at trial, the R.C.M.P. advised counsel that the property would be held until after the decision was rendered in the event of any appeal. Some nine months later the R.C.M.P. wrote to the complainant advising him that his personal property, including the bonds, had been destroyed in error.

3. The R.C.M.P. later compensated the complainant in the amount of \$300 and signed the necessary documents to enable replacement of the destroyed bank bonds.

4. The circumstances surrounding the accidental destruction of the complainant's property became the subject of an R.C.M.P. internal investigation. A Corporal and two Constables were counselled and a Sergeant was counselled and transferred as a result of their involvement in the destruction of the property.

5. We are certain that this case represents nothing more than an isolated incident of carelessness in the handling of detained property.

DETAILED SUMMARY NO. 22

1. We point out at the outset that we are not a Commission of Inquiry into the problem of enforcing the narcotics and drug laws. Nonetheless, certain investigative techniques that are used in drug investigations by members of the R.C.M.P., and that raise issues of conduct "not authorized or provided for by law", have come to our attention. Some practices employed in the enforcement of narcotic and drug laws, because they are used by undercover members and informants, rarely came to public light; others may be disclosed in court, but because evidence obtained illegally is at present admissible in Canadian courts, defence counsel usually ignore any possible illegality in the methods used by undercover members and informants, and judges have no need to pass comment on the legality or illegality of such practices. Thus, important and troubling legal issues have tended to be ignored. Our discussions with senior members of the R.C.M.P.'s Criminal Investigation Branch have revealed a dichotomy between members who recognize the importance of facing up to these legal issues and seeking legislative protection for necessary investigative practices, and members who would prefer to regard some of these practices as being only "technical violations" of the law. As we have seen often in the course of our inquiry, the latter attitude has caused both the Security Service and the C.I.B. to avoid discussion of, and legislative assistance in regard to, other techniques. The result has been to place members in the field in an

unenviable dilemma. They are expected to produce investigative results, but they frequently must be concerned about their own position in law. We consider it unfair to such members that they should be expected by senior management and by the people of Canada to fight against drug traffickers and yet leave them exposed, however "technically", to the possibility of prosecution. Moreover, as we have indicated in our Second Report, Part III, Chapter 8, the toleration of violations of law by the police in order to protect society is the top of a slippery slope, and creates in the police force, as it does in a security intelligence agency, an atmosphere of willingness to accept "bending" the law in order to achieve a noble purpose. This may lead to unforeseeable consequences, and is to be deplored.

2. In our Second Report, Part III, Chapter 9, we described a number of legal problems that have arisen in drug investigations, as follows:

42. In drug investigations, an undercover member or source necessarily adopts the guise and mannerisms of individuals who typify the drug community. In the course of playing the part of an addict or trafficker, the undercover operative may be asked to handle, administer or deliver drugs. Criminal investigation officers have repeatedly stressed that such acts are essential to attaining and maintaining credibility in the drug community. However, under existing law, such acts may, depending on the circumstances, result in the commission of drug offences by the operative.

43. Drug offences are defined in the Narcotic Control Act and the Food and Drugs Act. Section 3 of the Narcotic Control Act prohibits the possession of a narcotic. Section 4(1) of the Act provides that "no person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic". Section 4(2) provides that "no person shall have in his possession any narcotic for the purpose of trafficking". The expression "traffic" means "to manufacture, sell, give, administer, transport, send, deliver or distribute", or to offer to do any of these activities. Section 5 of the Act states that except as expression "traffic" means "to manufacture, sell, export from or import into Canada, transport, or deliver", otherwise than under the authority of Part III of the Act or the regulations. There is no offence of possession of a controlled drug *simpliciter*. Under section 41(1), it is an offence to possess a restricted drug. Section 42(1) prohibits trafficking in a restricted drug or any substance represented or held out to be a restricted drug, and section 42(2) prohibits possession of a restricted drug for the purpose of trafficking. The expression "traffic" has the same meaning as it does in the context of controlled drugs.

44. We now examine a number of problem situations which arise in connection with drug investigations as such problems were presented to us in meetings with senior officers from the R.C.M.P.'s Criminal Investigation Branch.

(i) The Commission or Kickback/Trafficking Situation: In making a purchase of narcotics directly from, or as a result of an introduction by a middleman, the undercover operative frequently has been expected to comply with the custom of the trade by giving a small percentage of the purchase to the middleman as a commission. Under present legislation, the undercover operative would be committing the offence of trafficking.

- (ii) **The Administering/Trafficking Situation:** In the course of their associations with addicts, undercover members or sources (the latter of whom may themselves be addicts) have been asked by the addict to administer or assist in administering the drug. As in the "kickback" situation described above, administering a drug may constitute the offence of trafficking.
- (iii) **The Passing On/Trafficking Situation:** Again, because of their required association with drug users, undercover operatives have been called upon to "take a joint" of marijuana, sniff cocaine, or even inject heroin. Undercover members have been instructed to simulate the act where possible or, if necessary, refuse the drug and pass it on. By passing on the drug, the undercover member may commit the offence of trafficking. Undercover sources, who may be regular users in any event, have been given no instructions to simulate the use of the drug. Nonetheless, in passing on the drug, they may also have committed the offence of trafficking.
- (iv) **The Offering/Trafficking Situation:** As part of establishing and maintaining credibility, undercover members have been *encouraged* to offer drugs for sale, but never to carry through such an offer by actually making a sale. This has been a regular operational practice. Undercover sources (who are sometimes established traffickers) have generally been allowed to operate as they normally would. Often this has meant that sources are permitted to continue their possession or trafficking of drugs. In the case of both members and sources, the offence of trafficking may have been committed.
- (v) **The Distribution/Trafficking Situation:** The "controlled delivery" of narcotics is another operational technique which has raised questions of legality. In order to gain sufficient evidence or intelligence to implicate the principals in illicit drug organizations, decisions have been made to "sacrifice" an amount of drugs (normally only a small amount) for distribution to users in order to avoid the target's suspicion that would arise when a quantity of drugs destined for the "market" did not arrive. Evidence led at a recent British Columbia Supreme Court drug trial illustrates this operational technique. C.I.B. handlers, after taking samples of a drug supplied to their source by the target, permitted the source to sell the remainder of the drug for this very reason. 'Sacrifices' have also occurred in 'Test Run' situations, where an international drug enterprise, having set up a major deal with an undercover operative to import drugs into Canada, will first run a comparatively small amount through the planned route before delivery of the main shipment. Where undercover operatives have become directly involved as couriers, they may have committed the offences of importing and trafficking.
- (vi) **Possession:** Section 3(1) of the Narcotic Control Regulations states in part:
3. (1) A person is authorized to have a narcotic in his possession where that person has obtained the narcotic pursuant to these Regulations and...

(g) is employed as an inspector, a member of the Royal Canadian Mounted Police, a police constable, peace officer or member of the technical or scientific staff of any department of the Government of Canada or of a province or university and such possession is for the purposes of and in connection with such employment.

The apparent breadth of section 3(1) is limited by the requirement that the narcotic be obtained "pursuant to these Regulations". We do not think that when an undercover member comes into possession of a narcotic while investigating narcotic trafficking, he is protected by this section. While the member does have possession "for the purposes of and in connection with such employment", he has not obtained the narcotic "pursuant to these Regulations". The Regulations provide protection only in the specific case of an R.C.M.P. member being supplied the narcotic by a licensed dealer (section 24(2)). A provision similar to section 3(1)(g) is included in the part of the Food and Drugs Regulations dealing with restricted drugs. (It will be recalled that there need be no corresponding exemption in the case of a *controlled* drug, as possession of that drug is not an offence):

J.01.002. The following persons may have a restricted drug in their possession:

(c) an analyst, inspector, member of the Royal Canadian Mounted Police, constable, peace officer, member of the staff of the Department of National Health and Welfare or officer of a court, if such person has possession for the purpose and in connection with his employment.

Unlike the Narcotic Control Regulations, however, the Food and Drugs Regulation does not cover possession by sources. In addition to the exemptions described above for the possession of a narcotic, the Minister may, pursuant to the regulations, authorize possession of a narcotic as follows:

68.(1) Where he deems it to be in the public interest, or in the interests of science, the Minister may in writing authorize

(a) any person to possess a narcotic, for the purposes and subject to the conditions in writing set out or referred to in the authorization.

These authorizations for possession of narcotics and restricted drugs must, however, be read in light of the comments of Mr. Justice Laskin, when he was still a member of the Ontario Court of Appeal, in *Regina v. Ormerod*. At that time, the Regulation read as follows:

An inspector, a member of the Royal Canadian Mounted Police, constable or peace officer or member of the technical or scientific staff of any department of the Government of Canada, of a Province or university, may be in possession of a narcotic for the purpose of, and in connection with, his employment therewith.

His Lordship limited the effect of the section (now section 3(1)(g) of the Narcotics Control Regulations, and similar to section J.01.002 of the Food and Drugs Regulations) by holding that the Regulation did

not protect an undercover member of the R.C.M.P. who had purchased narcotics and therefore had "possession as a direct consequence of trafficking which ensues from solicitation by a policeman". It may be argued nonetheless that the member and even his source would have a defence if charged with possession since the courts have held the offence of possession to involve a degree of *control* which would not be present if the possession was solely for the purpose of furthering the investigation and the person in possession had the immediate intention of turning the drug over to the police. In long-term undercover operations, however, it is not always the member's or source's immediate intention to turn the drug over to the police. The six operations described earlier in this paragraph, although they may be unlawful, have been referred to us by the R.C.M.P. as vital to the successful prosecution of drug-related offences.

3. Later in our Second Report, Part X, Chapter 5, we briefly discussed a mechanism which would allow these necessary investigations to be pursued in a legal manner. We said:

The Narcotic Control Act and the Food and Drugs Act should be amended to broaden the circumstances in which it is lawful for agents or members of the R.C.M.P. to handle drugs for the purpose of gathering information or evidence concerning drug-related offences. The amendments should provide that a person who is employed as a member of the R.C.M.P. or a person acting under the instructions of the R.C.M.P. shall not be guilty of the following offences related to a narcotic or a controlled or restricted drug so long as his acts are for the purpose of and in connection with a criminal investigation: possession, trafficking, possession for the purpose of trafficking and sale. To prevent abuse of this exemption, and to ensure that it is relied upon to protect undercover members in the specific situations described in Part III, Chapter 9 (kickbacks, administering, passing on, offering, distribution and possession), the R.C.M.P. should deal with this exemption in a detailed way in its guidelines governing the use of undercover operatives. For one thing, these guidelines should provide direction as to the extent to which undercover members or sources may release drugs into the market, a subject which we will discuss in a future Report.

4. Here, we examine six cases which have been brought to our attention as illustrations of the complexities of current drug law enforcement practices. At the end of our summary of these cases, we isolate and examine the issues raised in these cases. At the outset, however, we note that our summaries of the facts on these cases must not be viewed as being absolutely accurate. In some cases, our investigators were not permitted access to divisional files, and in other cases they were not permitted to speak with R.C.M.P. members involved in those cases, as the cases were reported to us as still being under investigation. Where, because of these circumstances, it has not been possible to ascertain whether the findings of our investigators are accurate, we have stated our version of the facts as well as that of the R.C.M.P.

Case 22A

5. In this case, an informant had advised the R.C.M.P. that two individuals, A and B, had approached him to assist them in importing hashish to Canada.

The R.C.M.P. commenced an investigation and soon discovered that a third person, C, was also involved in the intended operation. Eventually, an undercover member, through the informant, was introduced to the three suspects and discussed the purchase of drugs with them. The undercover member later purchased 250 grams of liquid cannabis resin from A and B. The informant then, acting on R.C.M.P. instructions, notified the suspects that he had a contact at Canada Customs who could assist them with the importation of drugs. Another undercover member was then introduced to C as the Customs contact. C, together with the informant and an undercover member, made two trips abroad but were unsuccessful in their attempts to purchase the required drugs. The informant and an undercover member finally met A in another country and obtained baggage stubs and baggage keys from him. The informant and the undercover member then returned alone to Canada, cleared the baggage through Customs and placed the baggage, containing 100 pounds of hashish, in C's car as pre-arranged. A, B, C and C's son were then arrested and charged with conspiracy to traffic in narcotics and importing narcotics.

Case 22B

6. In this case, D, one of the accused, had been contacted in June of 1977 by an R.C.M.P. informant who indicated that he was interested in making a drug purchase from D. D initially refused. The informant made approximately 15 to 20 telephone calls to D between June and September, insisting that D secure cocaine for him until finally, in September, D contacted his former girlfriend E, and persuaded her to obtain 1 gram of cocaine for the informant. R.C.M.P. files indicate that at approximately this time the informant advised police that D was involved in cocaine distribution and that D had access to a "connection" which could supply bulk amounts. One month later, the informant persuaded D to supply one half-ounce of cocaine and paid \$1,100.00 (supplied by the R.C.M.P.) to D. Present during this last transaction was an undercover member. The informant then dropped out of the picture and the undercover member began to undertake negotiations with D for the further supply of drugs. D finally agreed to supply the drugs to the undercover member. D testified that he made this decision because the undercover member had applied pressure, indicating that he had been told that the undercover member's physical well-being would be threatened if D did not supply the drugs. (R.C.M.P. representations to us, however, were that once D was convinced of the trustworthiness of the undercover member, the question of D selling cocaine to him was never at issue. The only problems encountered were D's insistence that the money had to be "fronted", and his refusal to introduce the undercover member to his drug connection). The undercover member refused to front the money for the purchase and, after further negotiation, was allowed to accompany D to the residence of the supplier, E. At that time the undercover member purchased the cocaine (some two and one-half ounces at a price of \$4,900). D and E were subsequently arrested and charged with two counts of trafficking in cocaine, for which they were both convicted.

7. In this case, the informant was the same informant who had appeared in court and given evidence in the trial of Case No. 22F. During that trial, he

admitted under oath that he had travelled to Europe, Malaysia and Bangkok and smuggled heroin into Canada on behalf of another individual, Q. Upon his return to Canada in 1976, the informant was given three ounces of heroin by Q as payment for the trip and was then instructed to go to a certain hotel. When the informant arrived at the hotel he was arrested by the R.C.M.P. It appears that the informant had been "set up" by Q. The informant stated in evidence, however, that he was never charged but has been an informant for the R.C.M.P. ever since.

Case 22C

8. In this case, the majority of the evidence deals with one H, who disappeared in an airplane crash prior to trial. H had been charged and acquitted at a previous trial with respect to conspiracy to traffic in MDA and was about to stand trial on a second set of conspiracy charges when he disappeared. An employee of H, J, therefore proceeded to trial alone and was convicted and sentenced to three years. The relevant circumstances of the case follow.

9. In the summer of 1976, R.C.M.P. Corporal K was introduced to an informant who was then known to the police to be a small-time drug trafficker. Corporal K, who had been attempting to obtain evidence against H but who had been unable to do so, decided to engage the informant to befriend H and then eventually to purchase drugs from H. The informant, with R.C.M.P. encouragement, began to socialize with H over a period of several months, cultivating his friendship and finally, again acting upon the instructions of the R.C.M.P., offered to sell empty gelatine capsules, which could then be used in trafficking operations, to H. To this end the R.C.M.P. supplied approximately 400,000 specially identifiable capsules to the informant, who in turn sold them to H. The informant then sought to have H sell him MDA. H agreed and deliveries of MDA were made in March of 1977 in three transactions, totalling three and one half pounds. At trial, Corporal K admitted that during this investigation, senior R.C.M.P. officials, as well as the Crown Attorney, were aware of the informant's continuing criminal activities when under the direction of the R.C.M.P. They were also aware that of the three and one half pounds of MDA purchased from H, three pounds were allowed to remain in the informant's possession and that the informant would be selling those drugs. Corporal K testified at trial that he had nonetheless not intended to lay criminal charges against the informant. He further testified that when he was introduced to the informant, the informant was a small-time marijuana dealer, but that the informant progressed to dealings of a much larger scale while working for the R.C.M.P. For example, Corporal K admitted that he was aware that the informant was importing MDA to the United States and selling it, and that he was also selling cocaine in Canada by ounce. The informant testified that in 1976, after commencing work for the R.C.M.P., his drug dealings progressed from those involving four to five pounds of marijuana to those involving hundreds of pounds, and from grams to ounces in cocaine. He also testified that he imported some sixteen hundred pounds of marijuana and imported and sold some eight to ten ounces of cocaine at \$2,000 dollars per ounce. The informant was also allowed to possess at least one unregistered

firearm, to the knowledge of his handler. An inspector of the drug enforcement branch testified that he was aware that the informant was dealing in illicit drugs and was an active trafficker during the course of this operation undertaken on behalf of the Force.

10. We note that there is some disagreement as to the degree of encouragement that was necessary to persuade H to traffic in MDA with the informant. The trial transcripts appear to indicate that the relationship between the informant and H was developed over a period of several months, and that, when the suggestion was made to H that he supply MDA to the informant, H was reluctant. Representations made by the R.C.M.P., however, indicate that the Force was advised upon debriefing the informant after a meeting with H, that H had unexpectedly "fronted" him with one quarter pound of MDA and that H was also offering to set him up in a laboratory to make MDA. Furthermore, the Force suggest that there was never any reluctance by H to sell MDA. The informant merely had to satisfy H that he was not a police agent.

Case 22D

11. In this case, an undercover R.C.M.P. constable purchased one capsule of heroin from the accused, N. N, acting as the middleman, having purchased the capsule from two others, demanded to have a "jimmy" from it before giving it to the undercover constable. The constable and N then proceeded to N's residence where N requested the constable knock off a bit of heroin into a spoon. The constable did as requested and N then "cooked up" and attempted to inject himself. Encountering difficulty, N requested the undercover constable to squeeze N's forearm in order to facilitate the injection. The constable complied. The remainder of the capsule was turned over to the undercover constable. N and the two individuals from whom he had purchased the drugs were charged subsequently with trafficking in heroin. One of those two individuals subsequently swore out an information charging the constable with trafficking in heroin. A stay of proceedings was subsequently ordered by the provincial Director of Criminal Law.

Case 22E

12. O was originally charged, along with numerous other persons, with conspiracy to traffic in heroin; he was acquitted. He was then charged with two counts of trafficking in heroin and O claims that because of poor health he pleaded guilty to both counts and was subsequently sentenced to sixteen years. He then appealed both convictions and the sentence. The facts are as follows.

13. O had met and befriended a police informant. The informant used O as a courier to pass heroin to an undercover member (note that the R.C.M.P. contest the statement that the informant used O as a courier). The drugs were enclosed in a cigarette package and the money was hidden in a similar container. The first transaction occurred in 1976 when the informant requested O to deliver a package to the undercover member, and the second transaction occurred just a few weeks later, under the same circumstances. (Note again

that the R.C.M.P. contest this conclusion; drug investigators indicate that on neither occasion did the informant request O to deliver a package of heroin to the undercover member. They state that O made his own arrangements for meeting with the member, controlled his own transactions and made his own arrangements for future meetings).

14. Prior to trial, the informant was shot and killed by police, following a high speed chase. It is known that the informant, as well as another individual, were used by the R.C.M.P. to introduce members of a foreign drug ring, described in Case No. 22F. There was no indication that O gained financially from these two transactions (again, the R.C.M.P. question the validity of this statement. When O was arrested, \$86,000.00 was seized from him and, although he was unemployed at the time he had paid \$51,000.00 for his house and had apparently made a delivery of \$32,000.00 to an "overlord" in the drug trade). O claims that he was only interested in smuggling his inheritance from an eastern block country into Canada and was convinced that the informant and the undercover member could assist him. There was no evidence to indicate that O was involved in drug transactions with anyone else; the only two people involved in this case were the informant and the undercover member (the R.C.M.P. claim that this statement is false. O's involvement in importing heroin to Vancouver from South East Asia was known but these transactions occurred at a level much above that of the dealings of the informant).

15. The source of the heroin which the informant gave to O for delivery to the undercover officer was not disclosed, but it is believed to have been supplied by the R.C.M.P., then recovered by the undercover member (the R.C.M.P. flatly state that they did not provide any heroin and that the informant did not have any to give).

Case 22F

16. Here, a number of foreigners, including P, were charged with conspiracy to traffic in heroin. Three undercover members were involved at various stages. In addition, two informants were involved — the one referred to in Case No. 22E (who was subsequently killed by the police) and the other, Q, who was reportedly one of the top drug dealers in the Vancouver area. (The R.C.M.P. contest the assertion about the importance of Q. They claim that Q was not one of the top drug dealers in Vancouver during the course of this investigation, and that he became involved in a substantial way only after the arrests of those being investigated.)

17. Our research indicates that P was a small-time drug dealer working for Q when he was introduced by Q to an undercover member. (The R.C.M.P. contest this point, claiming that they had no way of knowing how much heroin P sold before meeting the undercover member, and also claiming that he was not in reality working for Q.) The undercover member then encouraged P to purchase heroin for him by visiting on him almost every day, phoning him etc. P then encouraged others to purchase heroin so that he could sell it to the undercover member, resulting in all the accused becoming much more deeply

involved in the heroin trade than before the undercover member was introduced to them. (Again, the R.C.M.P. contest this statement; they claim that P and P's organization were more than anxious for the business of the undercover member.) All accused were convicted and sentenced from 10 years to life.

18. During the trial of the accused, Q's name was raised several times. One witness for the crown, a police informant (the same informant who was involved in Case No. 22A) testified that he formerly was a courier employed by Q to smuggle drugs into Canada. Another individual admitted to being a courier working for Q, smuggling heroin into Canada. A defence witness, presently serving 10 years on a charge of conspiracy to traffic in heroin, testified that in 1976 he was recruited by Q, whom he knew as the head of a drug importing organization, to deal in drugs. He worked for Q until his (the witness's) arrest in February 1977. The defence witness claimed that during this period of time he peddled six pounds of heroin for Q and paid Q between 150 and 200 hundred thousand dollars. The witness further stated that he had personal knowledge that Q had drug connections in South America, Hong Kong, Bangkok and Amsterdam. Another individual, presently serving a 10-year sentence for trafficking in heroin, testified that he was employed by Q as a courier since 1974 and that on three occasions he accompanied Q to Bangkok and smuggled a total of 72 ounces of heroin into Canada. On the first trip, Q paid him \$8,000.00 and on the two subsequent trips, he was allowed to keep 12 ounces of heroin.

19. At trial, an R.C.M.P. sergeant admitting using Q as an informant and acknowledged his awareness of three investigations concerning Q's involvement in drug importation. During the course of this trial Q's residence was searched by the R.C.M.P. and eight point four ounces of heroin were seized. A charge of possession for the purpose of trafficking was laid, but later stayed.

Conclusions on legal issues raised by these cases

20. In Case No. 22A, the activities of the two undercover members and the informant may have amounted to conspiracy to import narcotics, and one undercover member and the informant may have been guilty of the importing itself. In Case No. 22B, the informant and the undercover member may have been guilty of conspiracy to traffic in cocaine and of trafficking itself. In Case No. 22C, the R.C.M.P. Corporal and Inspector may have been guilty of conspiracy to traffic in a number of narcotics or a restricted drug, and the informant may have been guilty of trafficking in those same substances. In Case No. 22D, the undercover R.C.M.P. member may have committed the offence of trafficking in heroin by assisting the accused, N, in administering the drug. In Case No. 22E, the informant may have committed the offence of trafficking in heroin. In Case No. 22F, the undercover member may have conspired with the accused, P, to traffic in heroin.

21. These possible violations of the law serve to illustrate the problems we raised in our Second Report, Part III, Chapter 9, from which we quoted at

length at the beginning of this section. We emphasize here the view we expressed in our Second Report, that such activities, which currently amount to crimes, must have the legal consequences removed if drug laws are to be enforced effectively.

Other policy issues

22. We discussed above only possible legal violations. Entrapment, however, is also a concern. Entrapment, absent counselling or conspiracy, is not an offence in Canada, nor does it appear to provide a defence for the entrapped individual. Yet we express concern, particularly in this field of drug crimes, over the use of practices which, as we have seen in some of the above cases, may border on entrapment. We repeat here what we proposed concerning entrapment in Part X, Chapter 5 of our Second Report:

91. We therefore propose that there be a statutory defence of entrapment, embodying the following principle:

The accused should be acquitted if it is established that the conduct of a member or agent of a police force in instigating the crime has gone substantially beyond what is justifiable, having regard to all the circumstances, including the nature of the crime, whether the accused had a pre-existing intent, and the nature and extent of the involvement of the police.

92. In addition to the provision of a statutory defence, we think that the Commissioner of the R.C.M.P. should issue guidelines relating to informers and instigation, and these should be made public. Such guidelines have been issued and made public in England and the United States. The guidelines should be approved by the Solicitor General. Breach of the guidelines should be regarded as a disciplinary offence. These guidelines should direct that "no member of a police force, and no police informant, counsel, incite or procure the commission of a crime". This aspect of the guidelines has been discussed in Part V, Chapter 4 in relation to the use of informants by the security intelligence agency. On the issue now under discussion, they should require that the undercover policeman have reasonable grounds to believe that the person instigated had been engaged in similar conduct in the past. However, the guidelines cannot be too specific, for otherwise criminals will be able to test persons they are dealing with in the light of known detailed police procedures.

WE RECOMMEND THAT the Criminal Code be amended to include a defence of entrapment embodying the following principle:

The accused should be acquitted if it is established that the conduct of a member or agent of a police force in instigating the crime has gone substantially beyond what is justifiable having regard to all the circumstances, including the nature of the crime, whether the accused had a pre-existing intent, and the nature and extent of the involvement of the police.

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WE RECOMMEND THAT the administrative guidelines concerning the use of undercover operatives in criminal investigations which we recommended earlier be established by the R.C.M.P., include a direction that no member of the R.C.M.P. and no agent of the R.C.M.P. counsel, incite or procure an unlawful act.

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23. We also note the policy direction concerning entrapment which is found in the R.C.M.P. Operational Manual.

Do not allow your informant to deliberately provoke or instigate a crime in order to trap the intended victim.

1. Such conduct is deplored by all. The case would likely be dismissed by the courts and there would be criticism against the member and the Force.

24. Yet some of the cases we have summarized in this section indicate that there is a strong possibility that informants *have* instigated crimes in a manner that may have amounted to entrapment.

25. A further policy issue is that of "targetting". It seems appropriate that those who are the most highly-placed in a drug organization should be the 'targets' of drug investigations. To this end, informants should be targetted "upwards", i.e. the informant should be in a lower position in the organization than the target. What we have seen in a number of cases, however, is a senior member of a drug trafficking organization providing evidence against others who hold lower positions in the organization or in the criminal community in general. This situation gives the senior individual tremendous power over those below him; yet his providing information to the Force may result in that senior individual himself not being arrested and charged. Thus, the principal in a drug organization may carry on while only the foot soldiers are caught.

26. While the R.C.M.P. have indicated to us that they "in most cases" target upwards, there is no written policy regarding targetting. Furthermore, the Force has pointed out that it is not always possible to restrict the type of information they will receive from their informants, and that in consequence it may be impossible to prevent a senior person from providing information concerning a junior in the drug organization.

27. We have evidence before us which establishes that the R.C.M.P. is prepared to use a significant figure in the underworld in order to obtain convictions of lesser drug dealers, and during the course of the investigation permit a major dealer to sell very large volumes of narcotics to others than the R.C.M.P. in order to maintain his credibility. This practice has allowed drugs to reach the streets in large quantities. Concern about this practice has been expressed by a middle-rank C.I.B. officer, who observed that the practice permits too much narcotics to reach the streets. He felt that such a practice meant, in effect, that the R.C.M.P. were licensing the dealer to traffic in narcotics. Another officer also indicated his concern that should it become known by agencies responsible for policing that the R.C.M.P. allowed narcotics to be sold without the knowledge of those agencies the R.C.M.P. could be damaged forever. Furthermore, he apparently felt that if the federal government or the general public were to become aware of drugs reaching the streets in this manner, the repercussions against the Force would be tremendous.

28. These R.C.M.P. arguments notwithstanding, we stress the need to target upwards wherever possible. To catch the "foot soldiers" while leaving the principals untouched serves only to preserve the integrity and strength of the drug trafficking organization, while at the same time affording those principals even more power over those who work for them.

29. A third issue arises from what, according to the R.C.M.P., is an imperative that informants and undercover members be allowed to pass drugs that reach them into the market. The R.C.M.P. are adamant that this is necessary in order to preserve the credibility of the undercover operatives and consequently their lives and the eventual success of the operation. Yet, in law, this may mean that informants and undercover members are trafficking. When we suggested to senior members of the Force that drugs should not, wherever possible, be allowed to reach the street, they responded in a number of ways. First, they acknowledged that our suggestion was sound in principle. However, they indicated that it is impossible in some cases to prevent drugs from reaching the street because of the unpredictability of informant behaviour and the ability of some targets to elude surveillance (see, for example, Case No. 7). In other cases, it is seen to be an operational necessity to permit drugs, which might otherwise be seized and removed from circulation, to reach the streets. Targets, we were told, are notoriously suspicious; if drugs given to an informant in order to be distributed in a particular district do not reach that district, the target may cease dealings with the informant and traffic through other individuals who are *not* informers. Thus, the trafficking continues, the informer's ability to obtain evidence ends, and he himself becomes suspect in the eyes of the target. This loss of credibility may cost him his life.

30. One senior drug enforcement officer indicated in addition that the R.C.M.P., with its responsibilities at the international level to combat international trafficking, must appear to be effective in its work. He told us that the R.C.M.P. cannot hope to stem international traffic in drugs simply by always, in an investigation of a particular importing ring, stopping the first shipments that enter Canada. To do so might result only in catching the "foot soldiers". It is sometimes only upon the arrival of the second, third or later shipments that the R.C.M.P. are able to infiltrate the higher levels of the organization and obtain evidence on the principals, and thereby stop future shipments of even larger quantities of drugs.

31. There are therefore sound operational reasons for allowing drugs to reach the street. Yet, at the same time, the Force may be allowing new addicts to be created by this very acquiescence, and it is ignoring crimes which many feel it has a duty to combat. One senior R.C.M.P. officer told us that the dilemma created by making decisions whether to allow a shipment of drugs to reach the street in furtherance of an operation "tears our insides out". We feel that the R.C.M.P. and other drug enforcement agencies should not be left to struggle alone with such questions of law and policy, as these problems are not solely the concern of the Force, nor can they be dealt in a manner that makes the Force for all practical purposes unresponsive to governmental and Parliamentary control unless some external scrutiny of the decisions taken is undertaken. We do not say that the decision whether to let drugs onto the street, if at all,

and in what quantity, and in what circumstances, is one which will always be easy. While making the decision may be difficult, even more troubling is the absence of external guidance and the apparent absence of requests for governmental guidance in regard to these sensitive problems.

R.C.M.P. policy on informants

32. R.C.M.P. policy on informants states:

A paid informant may think he has a license to commit any offence in order to gain the desired result. To combat this:

1. Do not leave him to his own devices.
2. Make him operate on strict instructions.
3. At every stage of the operation, set out his limits.
4. Tell him that any consideration he may get depends on whether he follows instructions.
5. Tell him he has no license to violate the law, but let him use all the stealth and inventiveness he can, provided he stays within the limits you set out for him.

33. It is readily apparent that this policy, aimed at controlling informant behaviour, leaves any member attempting to apply it with a number of doubts. The policy is vague and, as a senior R.C.M.P. officer admitted, it was a "stop-gap" policy. Nonetheless, despite its vagueness, the policy does provide *some* guidelines; we have seen even these guidelines violated.

34. In examining the cases described above, it became clear that the informants were not always under the control of their handler. The informant in Case No. 22B, will be recalled, progressed from dealing in relatively minor amounts of drugs to dealing in significantly larger quantities while acting for the R.C.M.P. His handler testified at trial that he had no intention to charge the informant while the informant was in the employ of the R.C.M.P. In view of these facts, it is difficult to see how R.C.M.P. policy was *not* violated; it is at least arguable that the informant was in effect given a licence to commit crimes while in the employ of the R.C.M.P.

35. We express our concern as well about another feature of informer-police relationships — the tendency to ignore an informant's criminal activities in areas other than those in which he assists the police. For example, the police might tend to overlook a drug informant's activities in "fencing" stolen goods. Jerome Skolnick, in his study of law enforcement techniques in two American cities, observed:

In general, *burglary detectives permit informants to commit narcotics offenses, while narcotics detectives allow informants to steal...* [U]sually neither the narcotics detective nor the burglary detective seriously attempts to learn about his informant's involvement in the other detective's field of interest.²

² Jerome Skolnick, *Justice Without Trial: Law Enforcement In Democratic Society* (2nd ed. 1975) p. 129.

While there is some justification for allowing a narcotics informant, for example, to continue to traffic (in order to enhance his credibility and further the operation), there can be no such justification for turning a blind eye to unrelated criminal activities which the informant may commit. We feel that not enough attention is paid to reducing to *the absolute minimum* the chances that an informant will indulge in criminal activities unrelated to the subject-matter of investigation. Any tolerance of such a situation is entirely unacceptable. R.C.M.P. policy on informants should reflect this view.

DETAILED SUMMARY NO. 23

1. The complainant first contacted us in June 1978. His complaints can be summed up as follows:

- (a) He believed that his security clearance was revoked in 1971. Although he had no direct evidence of this fact it appeared to him to be a logical conclusion in view of his 1971-73 career development. At this time his name had appeared on a list circulated by the Solicitor General. The complainant felt that his name was added to the list as an afterthought, without justification, and because of bureaucratic politics.
- (b) He believed that adverse security reports were a factor in his dismissal from a government agency. Although he had no evidence of this he felt that the individuals concerned used an adverse security report as a lever in reaching the decision to dismiss him. He believed that possibly the R.C.M.P. Security Service were innocent bystanders in the affair and that the weight of evidence revealed to date points to an irresponsible and malicious application of the provisions of Cabinet Directive 35 by hostile elements in the government agency.

2. The Security Service has kept records on the complainant since the 1940s. The current file was opened in January 1952. In the fall of 1970 a file on the "penetration of the [government agency]" was opened. On this and other files, the complainant's name is mentioned in connection with a group of student activists employed by the agency. Similar comments were included in a brief prepared by the Security Service, concerning the "Extra-Parliamentary Opposition" (E.P.O.). It was forwarded to the Solicitor General on May 12, 1971 and later to four friendly foreign intelligence agencies.

3. On June 15, 1971, a letter from the Solicitor General, dealing with the E.P.O. brief was delivered by hand to the Minister of Regional and Economic Expansion, the Secretary of State, the Minister of Health and Welfare, the Minister of Manpower and Immigration, and a Minister without Portfolio responsible for the government agency. Attached to each letter was a list of names of government employees which had been compiled by the Solicitor General's office from the R.C.M.P.'s brief on the E.P.O. Every name on the list is found in the brief. From our examination of R.C.M.P. files we have found no indication that the brief and the list were forwarded to people other than the parties to whom they were delivered by the Solicitor General's office.

4. It appears from the record that no formal consultation took place between the Solicitor General's office and the Security Service as to the handling of the material in the E.P.O. brief. However, the Security Service was aware of the

Solicitor General's intention to communicate in some way with other Ministers. This proposed plan of action was noted in a memo dated June 7, 1971 from an official of the Solicitor General's office to the Director General. During November 1971, a meeting took place between members of the Security Service and the head of the government agency concerning the presence of E.P.O. sympathisers in that agency.

5. At this meeting the R.C.M.P. advised the head of the government agency that since the time when the complainant had been cleared to secret standards when he had been considered for a Privy Council office position, he had not come to their attention in any adverse context. Because of this, and because the information they had about him was so dated, the R.C.M.P. advised that there was no reason for the Security Service to change its views on the clearance issue.

6. On August 18, 1972, an Inspector and the Director General of the Security Service called on the Minister, at the latter's request, to discuss the leak of a report. During the course of this meeting the Minister indicated his displeasure with the complainant and stated that he had sufficient grounds to fire him. No adverse security report on the complainant was made by the Security Service at this meeting.

7. Three days later the Inspector met with the acting head of the government agency and the Minister's Executive Assistant to discuss the problem of leaks. In the course of this interview the acting head indicated his opinion that the complainant could not be trusted and was unsuitable for any position in government. According to an R.C.M.P. report of the meeting, the Executive Assistant again mentioned that they wished to obtain material on the complainant. It appears that the Security Service, while anxious to assist the Minister and his senior officials, was reluctant to build an adverse security case against him when there was little to support it.

8. On July 19, 1973, the new Director General wrote a detailed report on the complainant to the newly appointed head of the government agency. This report summarized the material concerning the complainant on file in the Security Service and concluded:

14. The subject's involvement in matters of interest to the Security Service has been very slight particularly in recent years with the exception of his being responsible for the hiring of a number of individuals by [the government agency] who are of interest. The names of these persons are included in a brief explanation of "revolutionary Extra-Parliamentary Opposition" which is attached and which was forwarded 14 April 1972 to the Minister of State for Urban Affairs by the Solicitor General.

15. A current assessment of the [complainant] is difficult inasmuch as his own utterances received from untested sources are now quite dated [...]. We held concern in 1971 regarding his involvement in hiring persons of interest to this Service but in the absence of any information that this practice has continued or was done with malice aforethought our concern is diminishing. You are undoubtedly in a better position to assess the comments made in paragraph 13 respecting his difficulties with your [agency].

16. I am sure you will appreciate that some of the information contained in this letter and the attachment, emanates from sensitive sources. Hence, the Security Service would be grateful if it would be handled on a need-to-know basis within your [agency] and we would be consulted before any further dissemination is initiated.

9. In October 1973 the complainant was dismissed from the government agency. He commenced legal proceedings for unjust dismissal. The Supreme Court of Ontario found that the dismissal had not been justified and awarded damages in the amount of \$18,000. The only specific cause for dismissal raised by the agency at trial was the fact that the complainant had allegedly been indiscreet and had shown lack of judgment in disclosing a Cabinet document or causing it to be disclosed. The court found that no such indiscretion had taken place and that the complainant had merely followed an agreed-upon plan of action. There had therefore been no cause for dismissal.

10. Our investigation, which was restricted to a review of R.C.M.P. files, leads us to conclude that adverse security information was not an important or even significant factor in the complainant's dismissal. It seems clear that while a personal file was maintained on him, no significantly adverse information from a security point of view had been provided by the Security Service to departments during the 15 years preceding his dismissal. At the time of the dismissal the Security Service had reached the conclusion that the information on file was outdated and that he was not a subject of current interest. Furthermore, to the extent that we can judge from R.C.M.P. files, it appears that from the time the complainant arrived in the agency there were conflicts between him and the agency that were unrelated to security concerns.

11. Furthermore, we have found no information to indicate that the complainant had suffered the revocation of his security clearance. We were able to look at information on R.C.M.P. files, obtained from departmental sources, which alleged that the complainant was somewhat unreliable and headstrong, but this would appear to reveal a problem of conflict of personalities within the government agency rather than a security problem.

12. We have found no evidence that members of the R.C.M.P. acted in this matter in any way that was not authorized or provided for by law.

DETAILED SUMMARY NO. 24

1. The leader of a labour union forwarded a letter of complaint to the federal Minister of Justice of the day with a copy to us. In it he complained that during the previous several years the union and its members had been subjected to improper surveillance by the R.C.M.P.

2. The specific concerns expressed included illegal surveillance, infiltration, and espionage by members of the Force.

3. Investigation revealed that this labour union was considered by the Security Service as one of the most militant in the province in question. A senior executive in the union was known to have made numerous contacts with subversives in a number of organizations and to have cooperated with the

Soviets. A second executive member had travelled to Communist countries and met with their union leaders. A third high-ranking official in this union was suspected of being an agent of influence for the Soviet Union.

4. The R.C.M.P., for these reasons, had opened a file on the union in 1947, on the senior executive in 1969, and the second executive member in 1972. Our investigation confirmed that the R.C.M.P. has infiltrated the union by employing undercover members and paid informants, and has monitored the activities of its members and their telephones. In each case, the authorization to intercept private communications was obtained under the appropriate section of the Official Secrets Act.

5. We found no evidence of any activity by members of the R.C.M.P. that could properly be said to be "not authorized or provided for by law". A detailed outline on the extent of surveillance by the R.C.M.P. on unions may be found in our Second Report, Part V, Chapter 3. An analysis of the legal issues regarding authorizations to monitor private communications is in Part V, Chapter 4 of that report.

DETAILED SUMMARY NO. 25

1. A former government employee, complained to us about the manner in which members of the R.C.M.P. Security Service debriefed him upon his return to Ottawa from duties in a foreign country. Our investigation revealed that the Security Service felt the government employee had jeopardized his position while abroad, and that the Service was interested in whether he had been approached by agents of a foreign power.

2. The complainant was met at the airport in Ottawa by Security Service personnel, taken to the R.C.M.P. offices and later to a local hotel for debriefing. Members of the R.C.M.P. remained with him at the hotel for several days. Although he visited his Member of Parliament, a doctor and a close relative during this time, he felt that his freedom of movement had been restricted.

3. On the basis of our investigator's reports as to the interviews conducted, we are satisfied that the complainant was not detained against his will or physically maltreated.

4. This case demonstrates the need for setting down, in advance, as a term of employment or assignment, the obligation to submit to a debriefing in every case where a government employee is posted abroad. Such debriefings whenever necessary, would then not come as an unpleasant surprise to the employee returning to Canada. This subject was dealt with in our Second Report, Part III, Chapter 10 and Part V, Chapter 6.

DETAILED SUMMARY NO. 26

1. The complainant in this case wrote to us, alleging that he had been the subject of R.C.M.P. surveillance for many years.

2. Our investigation determined that the complainant became of interest to the R.C.M.P. Security Service in the mid-thirties and continued to be of interest to them until 1964.

3. The R.C.M.P.'s concerns were prompted by his relationship with the Communist Party of Canada and other Communist-controlled groups. He was known to have associated with intelligence officers from a foreign country and was himself suspected of being an intelligence agent.

4. During the time period in question, the complainant was the subject of intensive surveillance which included telephone interceptions, electronic eavesdropping and mail interceptions. The extent to which such conduct was not authorized or provided for by law is discussed in our Second Report, Part III, Chapters, 3, 4 and 8.

DETAILED SUMMARY NO. 27

1. A Member of Parliament wrote to us and asked that we conduct an investigation into break-ins and thefts that occurred at five business establishments in Toronto and ascertain if members of the R.C.M.P. or their agents were in any way responsible.

2. The five establishments referred to us were:

- (a) the offices of a research corporation;
- (b) the offices of two publishing companies;
- (c) the offices of an ethnic group; and
- (d) the offices of an aid organization which received funds from the federal government.

3. The break-in, arson and theft of documents from the research corporation received widespread publicity and was the subject of an investigation by the Metro Toronto police and later by the Ontario Provincial Police/Ontario Police Commission. These investigations and ours concluded that no member of the R.C.M.P. or an agent at their request was involved. More information on our investigation can be found in Detailed Summary No. 28.

4. The four other break-ins referred to us by the Member of Parliament were investigated by our staff and we concluded that no member of the R.C.M.P. was involved and that no person acting at the request of the R.C.M.P. was involved.

DETAILED SUMMARY NO. 28

1. This case was brought to our attention by a lawyer who was concerned about possible R.C.M.P. involvement in a break-in, arson and theft of documents which occurred at the offices of a research corporation. The news media speculated that the R.C.M.P. were responsible or had encouraged the offences.

2. Approximately two months after the occurrences, some of the stolen documents were turned over by a source of the R.C.M.P. to the R.C.M.P. Security Service. A newspaper editor publicly acknowledged much later that he too had been a recipient of some of the stolen documents and had given the documents to the R.C.M.P. Security Service. The R.C.M.P. retained both sets of documents for some seven years.

3. Whether the R.C.M.P. were involved in any way with the break-in, theft and arson was the subject of a full-scale investigation by the municipal police

force. A similar type joint investigation was conducted by the provincial police and the provincial police commission. All the investigative agencies concluded that no member of the R.C.M.P. or agent at their request was involved. Our staff investigation found no evidence that would be at variance with that conclusion.

4. Although our investigation has not revealed any facts not already brought to the attention of the Attorney General concerned, the one legal issue not really previously examined in depth arises from the retention of the documents by the R.C.M.P.

5. We have looked at the provisions of section 312 of the Criminal Code concerning the unlawful possession of property obtained by crime. It might be argued that this section was violated by members of the R.C.M.P. in this case when they retained the stolen documents for nearly seven years. We take no position in attempting to determine this issue but recommend that the matter be referred to the Attorney General of the province in question for consideration of this issue.

6. For related discussion on the retention of documents in espionage cases see our Second Report, Part III, Chapter 9.

DETAILED SUMMARY NO. 29

1. The Central Committee of a leftist workers' organization, established in 1977 through the fusion of three groups, complained of R.C.M.P. wrongdoings in a brief to us. Later letters from numerous members of this movement were received in support. The allegations were that the R.C.M.P.:

- (a) Broke into the Toronto office to steal the membership lists of one of the defunct groups;
- (b) Caused the firing of a female employee at the 1976 Olympics because she was a security risk;
- (c) Collaborated with the management of a major industry in Winnipeg to bring about the dismissal of three workers;
- (d) Characterized an American draft-dodger as a subversive, so that citizenship was denied to him;
- (e) Authored, mailed and distributed at meetings, anonymous, divisive letters to members of one of the defunct components in which the secretary's ability and emotional stability were questioned.

2. Our investigation determined allegations (a) to (d) to be unsubstantiated by any evidence which we considered adequate. These findings also apply to a number of individual complaints of wrongdoings solicited from members of the organization by its counsel and forwarded to us.

3. In the course of the investigation by our investigative staff, approximately 40 persons, including R.C.M.P. members, were interviewed and some 216 volumes of R.C.M.P. files were examined. Allegation (e) and Operation Checkmate generally are examined in our Second Report, Part III, Chapter 7 and in Part VI, Chapter 12 of this report.

DETAILED SUMMARY NO. 30

1. The complainant wrote to the Commission alleging that the Security Service of the R.C.M.P. had fabricated evidence in a security report, thereby causing his dismissal from a government agency.
2. The complainant was born in a foreign country and immigrated to Canada. Some years later, he obtained employment with the government agency but was dismissed while still on probation. He was told that he did not have the potential required for the government agency's overall career mobility programme.
3. His suspicion that this was not the true reason for his dismissal prompted him to complain to the Human Rights Commission. An officer of the government agency advised the Human Rights Commission that the reason for the complainant's release had been his failure to qualify for security clearance.
4. The government agency had requested a security clearance for the complainant. The R.C.M.P. Security Screening Branch had replied by relating certain events and concluding that "A. of these factors cause the Security Service to doubt the subject's suitability for a position requiring access to classified information at this time". The information supplied by the Security Screening Branch had been obtained from sources deeply involved in the community of which the complainant was a member.
5. We have dealt with the subject of security screening for Public Service Employment in our Second Report, Part VII, Chapter 1. It is interesting to note that the government department in this case seems to have failed to abide by the provisions of Cabinet Directive 35 (as amended) which requires "an attitude of much greater frankness with employees whose reliability or loyalty is in doubt...". Following amendments on December 27, 1963 (Ex. M-35), departments and agencies were required "to tell an employee about whom doubt has arisen on security grounds of the reasons for that doubt, insofar as is possible without endangering important sources of security information, and to give him an opportunity to resolve the doubt;" and "if dismissal appears to be the only prudent recourse, to have the case reviewed and the employee interviewed by the deputy minister, to give him a further opportunity to resolve the doubt that has been raised about him;...".
6. The complainant was under the misapprehension that the Security Service was responsible for the refusal to grant him a security clearance when in fact the responsibility for that decision rested with the agency.
7. It is obvious that the government agency in this case did not abide by the requirements of the revised Cabinet Directive on security. We did not examine the conduct of that agency in depth as to do so would have exceeded our terms of reference. Our investigation leads us to conclude that the complainant's allegation against the R.C.M.P. of having fabricated evidence, is not well-founded.

DETAILED SUMMARY NO. 31

1. This complaint file was opened following a Toronto newspaper's coverage of the trials of three members of a right wing organization who had been charged with, among other things, possession of explosives. The articles indicated that an R.C.M.P. informer who had infiltrated this organization had taken part in painting abusive graffiti against Jews, Blacks and known Communists while being paid by R.C.M.P.
2. Testimony at the trial, given by the informer and his R.C.M.P. handler, showed that many of the acts of vandalism carried out by the informer were performed with the full knowledge of the handler and his superiors.
3. The R.C.M.P. did not take any disciplinary action against the member for his handling of the paid informer in view of the trial judge's comments at the conclusion of the trial. He said:

I do not agree that [the informer] induced acts of mischief with [the member's] approval, and I accept [the member's] evidence that he learned of [the informer's] illegal activities after the fact, and I am satisfied that [the member] did his level best to confine [the informer's] activities to a degree where he, and by that I mean [the informer], refrained from truly criminal conduct consistent with obtaining information essential to the protection of the public safety.

4. Using only transcripts of the trial, we find it hard to reconcile the findings of the trial judge with the testimony of all concerned. The transcripts reveal that the member admitted that he was aware of a large number of offences committed by the informer; he did not know if he was told of every specific one and would have to count through his notes to estimate the number, but submitted that he realized that the informer was committing offences over a 14-month period. He went on to state that he was aware that the informer was being paid by the R.C.M.P. at the time he was committing the offences and that his superiors were aware of this. Later in his testimony he said he approved the informer going along for the purpose of postering and spray-painting and admitted that this was an illegal act.
5. We have examined the issues raised by this case in which a human source was recruited and placed within a group which had attracted the attention of the Security Service. An analysis of the informer's involvement in this instance, along with the related issues, can be found in our Second Report, Part III, Chapter 9.

DETAILED SUMMARY NO. 32

1. The leader of a Canadian group complained to us that over the last decade members of his organization have been subjected to harassment, improper surveillance, and numerous other questionable police tactics by members of the R.C.M.P.
2. The specific concerns were as to whether the R.C.M.P. (a) infiltrated its organizations; (b) monitored its telephones; (c) engaged in disruptive activities;

(d) opened or detained its mail; and (e) participated directly or indirectly in numerous break, enter and thefts of its offices.

3. Investigation revealed that this group first became a concern to the R.C.M.P. and the federal government in the early 1970s when 150 of their members forcibly occupied a government building. This left the R.C.M.P. in an embarrassing position as it had had no prior knowledge that this occupation had been planned and as a result the Force was not prepared to answer government concerns. The R.C.M.P. Security Service, in an attempt to prevent a recurrence, immediately coordinated a programme of source development, increased its manpower and set up a desk at Headquarters in Ottawa to deal exclusively with this group.

4. During the next several years, members of this organization were involved in violent demonstrations across Canada, which included occupation of buildings and property, road blocks and other forms of disturbance. Additional concerns were that other groups, regarded by the Security Service as subversive, were thought to be exercising influence over this group and the fact that members of a similar organization in another country were coming to Canada to encourage and promote violence.

5. Inquiries by our staff confirmed that during this period:

- (a) The Security Service infiltrated the organization, employed undercover members, paid informants who were members of the organization to attend meetings, and questioned group leaders, all in order to keep abreast of planned activities.
- (b) The Security Service monitored the telephones of some of the organization's headquarters but in each case an authorization to intercept private communications was obtained under the appropriate section of the Official Secrets Act. A discussion on the use of electronic surveillance may be found in the Second Report, Part III, Chapter 3.
- (c) The allegations of disruptive tactics, including allegations relating to the activities of Warren Hart, have been thoroughly investigated by our staff and we have concluded that this concern is unfounded. A detailed study into the surveillance of this group by the Security Service may be found in the Second Report, Part V, Chapter 3, and a review of the activities of Warren Hart, while employed by the R.C.M.P., may be found in this Report, Part VI, Chapter 11.
- (d) We are satisfied that the allegations of mail openings are unfounded.
- (e) The concern that members of the R.C.M.P. were involved in numerous "break and entries" of, and thefts from, its offices was investigated thoroughly. Because of the seriousness of this allegation, our staff spent a great deal of time to obtain the facts surrounding each incident. There was a total of six reported forcible entries. A brief synopsis of our finding in each case is reported below:
 - (i) A break, enter and theft occurred in an area in which a great deal of hostility existed between factions of the group. Entry was so amateurish

that it would lead one to believe that the culprit or culprits was or were more interested in causing damage than in stealing items of value or interest. The Security Service had only one man in the area, and from interviews with him we are satisfied he was not directly or indirectly responsible. The police have suspects but to date no charges have been laid.

- (ii) A break, entry and theft occurred at an office located in a small city and has been investigated by the local police. Investigation revealed that a man and woman were seen leaving the building the morning after the break in. There was evidence that the couch in the office had been used and it appeared that this couple entered the building to seek shelter. There was no evidence of R.C.M.P. involvement.
 - (iii) A break and entry of a local office in a remote area, which was reported to our investigator, was never reported to the local R.C.M.P. detachment. The complainant, despite attempts by our investigator to contact him, did not make himself available for further inquiries. Consequently, this investigation was not pursued further. We are satisfied from the information in our possession that if a break and enter did occur, the R.C.M.P. were not involved.
 - (iv) The break and entry of an office situated in a large city had already been investigated by the local police. The only article stolen would not have been of any interest to the Security Service. There were no suspects and the case remains unsolved.
 - (v) Numerous break-ins at the residence of two employees of this Canadian group have also been investigated by the local police. The employees were not a concern of the Security Service and the method of making the entries would indicate that the culprit was familiar with the occupants' habits. No arrests have been made and the case remains unsolved.
 - (vi) The break and entry of a school located in a city was investigated by the local police force. In this case, there was no evidence of forced entry. A member of the staff of the school advised the investigating police department that it was an inside job, requested no further action by them and said that the problem would be dealt with internally. The police discontinued their inquiries.
6. We have reached the conclusion, on the basis of the information available to us, that the R.C.M.P. were not involved in any of these incidents.

DETAILED SUMMARY NO. 33

1. In October 1978 we read press reports concerning what was described as a large-scale police raid on members of a Canadian Marxist-Leninist group who were conducting clandestine study sessions. According to the reports, the R.C.M.P. Security Service was responsible for the operation, during which members of the organization alleged that they had been harassed, threatened and intimidated. This incident later became the subject of protests addressed to

the Solicitor General of Canada and the Commissioner of the R.C.M.P., with copies to the Prime Minister and provincial government officials. However, the leader of the organization declined to be interviewed by our staff or file a complaint with us.

2. The absence of a complaint notwithstanding, a Commission investigation was initiated to look into the circumstances surrounding this Security Service operation. Personal interviews were conducted with the R.C.M.P. members involved and relevant R.C.M.P. records were examined. Termed an "overt surveillance", in which a total of 25 members participated, the operation was considered by the Security Service to be in accordance with its mandate. The publicly declared objectives of the organization, its political philosophy and the background of its leaders were said to characterize it as a subversive movement, meriting close attention.

3. The Security Service also maintained that the operation was the only means available to identify members of the organization. It was also said to have served as a "deterrent and disruptive" tactic by forcing destruction of records and sowing the seeds of suspicion amongst the members that they had been infiltrated.

4. The Commission investigation revealed that the planning of the operation had initially met with disagreement at R.C.M.P. divisional and HQ levels, where serious doubts as to its usefulness and timeliness were raised. However, the advice of the officer in charge of the Security Service in that area was finally acted upon, and Headquarters approved the action. Although he was not made aware of it initially, the Director General of the Security Service later ratified the operation and so stated in his testimony before the Commission.

5. While we determined that no illegal acts were committed by the participating R.C.M.P. members, the case does raise a question as to the justification of such an operation in the light of the results obtained and the adverse publicity created. In our opinion, if the Force was in attendance for the purposes of surveillance and disruption only, it was unnecessary to employ 25 armed members. However, if the purpose was to "intimidate" the group, through a display of force — which the R.C.M.P. denies — then such manpower would be required. We have dealt with physical surveillance and countering in our Second Report, Part III, Chapters 7 and 8 and with conspicuous surveillance in Part V, Chapter 6, and expressed our views there as to what the policy ought to be with respect to conspicuous surveillance.

6. We found also that the incident raised the issues of use, employment and control of Security Service manpower in that division. The abundance of personnel and equipment so readily available for that type of operation permits an inference to be drawn that its cost-effectiveness had been of little if any concern in deciding whether to mount the operation. This brings into focus the need to reassess realistically the present strength of the Security Service, as well as C.I.B. establishments, in terms of workload in larger centres across the country, which may be in excess of actual need.

DETAILED SUMMARY NO. 34

1. The leader of a Canadian group complained to us that over the past decade he and members of his organization have been the target of R.C.M.P. surveillance, harassment, racial discrimination and police activities. Complaints had already been addressed to two Solicitors General and other members of the federal government.

2. Specific allegations were made regarding mail openings, communication intercepts, physical surveillance, exchanges of information with foreign authorities on the travel and activities of certain members of this group, surreptitious entries, thefts of documents, arson, adverse reporting on citizenship applications, and manipulation of recent immigrants to develop them as sources.

3. Investigation disclosed that this group and affiliated associations became of interest to the Security Service in the early 1970s. This interest was generated by the increase in international terrorist incidents, including letter bombs and hijackings of aircraft, for which several foreign militant groups claimed responsibility. It had by then become apparent that members of the Canadian group provided not only moral and financial support for these activities but also openly and frequently criticized Canadian Government policy towards the countries involved.

4. Following the terrorism at the Olympic games in Munich in 1972, and in preparation for the 1976 Olympics in Montreal, the Security Service established a special group known as the "International Terrorist Guerrilla Section". It was their responsibility to keep the Directorate of Criminal Investigations as well as "P" Directorate informed of any threats to the safety of foreign dignitaries, diplomatic representatives and their staffs, the Prime Minister, and foreign and domestic airlines in Canada. Cooperation with the security intelligence agencies of other countries was intensified with a view to obtaining advance information about the travel of suspected terrorists to Canada. A thorough identification programme was started.

5. In 1973 the Security Service received information, and informed External Affairs as well as the Department of Manpower and Immigration, that counterfeit Canadian passports were being used by foreign terrorists. At the same time certain Canadian members of the complainant group became the subject of close attention. Their travels, activities and contacts with foreign embassies were considered to characterize them as supporters and sympathizers of acts of international terrorism committed by the militant factions of a "liberation organization", and they had taken part in demonstrations in Montreal, Toronto and elsewhere. While there was no concrete evidence that any of them actually advocated the use of violence in Canada, investigation of some of these extremists and their associates was undertaken, including electronic surveillance, mail openings and other means of constant monitoring. Authorizations for the investigative techniques used were requested and received under the appropriate sections of the Official Secrets Act.

6. The Security Service, in cooperation with the intelligence services of other Canadian police forces and foreign authorities, also discovered close links between the Quebec association of the complainant group and Canadian extreme left-wing movements, some of which were considered to be of a subversive nature. It was further determined that Canadian public funds, destined for a Canadian student organization, were being diverted through a Quebec group to the "liberation movement" overseas. The appropriate Canadian government agency was alerted to this situation.

7. Prior to the 1976 Olympics a defusing programme was initiated by the Security Service, comprising personal contact and interviews with key members of the group. By then, a number of foreign embassies from countries involved in the continuing hostilities had been identified as the source of funding, coordination, direction of propaganda and indirect participation in leadership conventions and other activities of the complainant group. In this connection, a high ranking official of one embassy was found to have interfered in the internal affairs of Canada, declared *persona non grata* and expelled. This man was one of the key contacts for, and exerted considerable influence on, the Canadian group in question.

8. Early in 1977 the Security Service reviewed and redefined the various forms of international terrorism, as well as the threat potential posed by individuals or groups to Canadian security both domestic and abroad. The intent was to develop a response capability in conjunction with other Canadian Police Forces and government agencies on the basis of long-term and consistent intelligence collection techniques to feed data bank facilities.

9. For about a decade the Security Service monitored the situation by means of communication intercepts duly authorized in respect of individuals under the appropriate sections of the Official Secrets Act. During the period 1972 to 1976 additional electronic and physical surveillance operations were conducted with a view to detecting any security threat involving the Montreal Olympics. Several members of the complainant group identified as extremists were subjected to mail openings. Close liaison and cooperation were maintained with Canadian police forces, government agencies and foreign law enforcement authorities, to monitor and report upon the international movements and contacts made by prominent activists of the group. Meetings were infiltrated and reported upon. In some cases, extensive physical surveillance was conducted in collaboration with provincial and municipal police forces. Efforts were also directed towards the recruiting and development of informants possessing the requisite language capabilities and background. A defusion programme put into effect in 1976 led to direct confrontation and interviews with group leaders.

10. Our staff investigated all aspects of the allegations presented by the group and arrived at the conclusion that those referring to arson, thefts of documents, adverse reporting on citizenship application, the manipulation of recent immigrants to force them to cooperate with the R.C.M.P. under threat of expulsion, etc., were unfounded. As for the allegations that racial discrimination was practised by members of the R.C.M.P. in specific occupations in which

numerous members of the complainant group were engaged, our staff determined that in one case only was the complaint justified. As a result of a long and thorough R.C.M.P. internal investigation into that complaint, appropriate disciplinary action was taken against the R.C.M.P. member concerned.

DETAILED SUMMARY NO. 35

1. In 1973 two R.C.M.P. members attached to the Security Service were dismissed from the Force as unsuitable under Regulation 173 of the regulations concerning the organization, discipline and administration of the R.C.M.P. Both members later became involved in a private security firm.

2. The two ex-members filed complaints with us in which they challenged the legality of their discharge from the Force and they alleged that they had been harassed personally and that their security business had been disrupted or interfered with by the Security Service since their separation from the Force. For these reasons they claimed their business operations had suffered losses of government and private sector contracts. A third allegation concerned an affidavit filed during a Federal Court action commenced by the complainants, who sought a court order to reverse the Commissioner's decision in this dismissal. It was alleged that the R.C.M.P. were instrumental in denying the court access to certain documents by misrepresenting their nature to a Minister acting on behalf of the Solicitor General, whose sworn affidavit was required to claim "Crown Privilege" in respect of the production of certain documents. As a result documentary evidence favourable to their claim was allegedly withheld. The complainants eventually discontinued their action.

3. Investigation by our staff into these allegations and concerns expressed by the two former R.C.M.P. members established that:

(a) Their complaints of illegal discharge had already been examined by another Commission and were the subject of court action which the complainants chose to discontinue. Had that action proceeded to trial, they would have had the benefit of a judicial ruling as to whether the procedure used in their discharge was according to law. In these circumstances we prefer not to make any finding as to this complaint.

(b) No evidence was uncovered to substantiate the allegations of R.C.M.P. interference or disruption relative to the complainants' business activities since their discharge. As for harassment, Commission investigation disclosed one documented instance of Security Service surveillance of the business premises by means of an observation post in an attempt to identify two persons suspected of having posed as members of the Security Service and having used an R.C.M.P. identification card. Initial physical description suggested that one of the ex-members might have been implicated. His photograph and that of other members of the security company were taken from the observation post but no one was positively identified. The surveillance operation was, therefore, abandoned. Even though the Security Service had been looking for two male suspects, they did not limit their photography to taking pictures of males

entering the business premises. Because of the location of the observation post at the side of the building, it appears that only employees entering the building were photographed. There does not appear to have been any intention on the part of the Security Service that the ex-members learn of this surveillance. Consequently we conclude that what was done cannot be said to have constituted "harassment". Nevertheless, we are concerned as to the object of the observation post and photography. The information that had been received was that two males had been involved in the use of the identification card; the R.C.M.P. already had photographs of the two ex-members, and it is difficult to understand why photographs were taken of their female employees. Moreover, the informant had advised the R.C.M.P. that the two males spoke French as a first language, whereas the only one of the two ex-members who could fit the physical description of the two males clearly speaks English.

(c) In regard to the signing of an affidavit under section 41(2) of the Federal Court Act to deny the Federal Court access to certain documents, our staff investigation established clearly that the Minister responsible for signing the affidavit, the Honourable Bryce Mackasey, did so with full knowledge of the contents of the documents in question. He concurred with R.C.M.P. representations that their disclosure to the court would be detrimental to national security as well as to Security Service operations. However, the Minister, after examination of the documents, decided to allow certain material to be made available for study by the court and counsel only. Thus it is not true that, as alleged by the complainants, all the documentation was withheld.

4. Basically, we consider the complainants' allegations to be unsupported by any acceptable evidence that they had been subjected to investigative practices not authorized or provided for by law. Nevertheless, we have found it difficult to understand why the Security Service would undertake a surveillance operation of such magnitude as is described in the previous paragraph, on the basis of rather flimsy information, and without apparent concern for the costs and manpower involved in the setting up of an observation post for three days close to the complainants' business premises. In examining the circumstances surrounding this particular incident, we could not escape the impression that the whole action was indicative of a vindictive attitude towards these ex-members by a particular member of the Security Service. Aside from this aspect, our inquiry into this matter caused us to be concerned as to whether the complement of Security Service and C.I.B. personnel may be unnecessarily large in major centres across the country and should be realistically assessed in terms of true needs.

5. In connection with the documented Security Service activity concerning the complainants, the sworn testimony before us of the Officer in Charge, to the effect that he was not aware of any Security Service operation in respect of the complainants, appears to be in conflict with the known facts. We did not pursue this apparent discrepancy and therefore make no comment about it.

6. While reviewing R.C.M.P. files we became aware of another aspect of the R.C.M.P.'s concern about the conduct of these ex-members. Following their discharge, but before the Protection of Privacy Act introduced the present provisions in the Criminal Code for electronic eavesdropping on July 1, 1974, the R.C.M.P. employed telephone tapping. It was authorized by a search warrant, issued purportedly under section 11 of the Official Secrets Act, by a Deputy Commissioner in his capacity as a Justice of the Peace under section 17(1) of the R.C.M.P. Act. The "Information" in support of the application of the warrant, sworn by an officer, stated that he believed that the ex-members

to be directly or indirectly associated with a foreign power

and to be

about to communicate information by telephone which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power contrary to section 4 of the Official Secrets Act.

(The reference to section 4 should have been to section 3.)

The examination of the file by one of the Commissioners has revealed that there was no suggestion on the file that the ex-members were suspected of having communicated, or of being about to, communicate information of any kind to any foreign power. Indeed, the file revealed that the purpose of the telephone tapping was completely unrelated to counter-espionage. As a memorandum made in June 1974 by a Deputy Commissioner stated in a review of the events of the preceding several months, the object was

to establish once and for all if any members of the Security Service in "C" Division were involved with undesirable characters outside the Force or if any of our operations had been compromised.

And again he said:

As mentioned earlier, we resorted to complete coverage of the principals concerned in this investigation, making use of COBRA [telephone tapping] ... facilities. The purpose of the investigation was to determine once and for all if some of our people in "C" Division had, in fact, been compromised in any way and as a result were involved in activities detrimental to the Force and the Security Service...

It remains to be added that the files indicate that the kind of "undesirable characters" who were suspected of being in touch with members of the Security Service were thought to be "undesirable" due to suspected criminal activities and associations, not due to involvement with a foreign power. The use of warrants under section 11 of the Official Secrets Act was the means by which, between 1954 and 1974, the Security Service effected telephone tapping, as we explained in our Second Report, Part III, Chapter 3. What we did not comment on there was the practice that appears to have developed, as in this case and in that of Detailed Summary No. 32, of obtaining warrants under section 11 when the facts could not be said to be such as to do what section 11(1) required — namely, to satisfy a justice of the peace

that an offence under this Act has been or is about to be committed.

Thus section 11 permitted a search warrant to be issued only when there was a past or imminent act that would constitute communication of information "that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power" (section 3(1)(c)), or when he has information "that has been entrusted in confidence to him by any person holding office under Her Majesty, or that he has obtained. . . owing to his position as a person who holds or has held office under Her Majesty" and he "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" (section 4). (We mention only those parts of the Act that relate to the communication of information.) Because of the change in the law in 1974, we have not reviewed the circumstances of the many warrants that were issued during the years preceding July 1, 1974, to determine the number of cases in which warrants were issued, purportedly in compliance with the provisions of section 11, when in fact there was neither belief nor suspicion in the minds of the R.C.M.P. that information might have been communicated to, or might be communicated to, a foreign power. (Another example of this occurring was found in the case which is the subject of Detailed Summary No. 36.) It is now old history. But it did occur, and the story serves a useful purpose: it confirms some of the reasoning that forms the basis of our recommendation, in our Second Report, Part V, Chapter 4, that warrants for electronic eavesdropping in security intelligence matters should be issued by a judge of the Federal Court of Canada. It will be noted that before July 1, 1974, the warrants were issued by an R.C.M.P. officer acting as a justice of the peace, but only after the Commissioner had obtained the administrative, non-statutory authorization of the Solicitor General to apply for the warrant. (We explained this procedure in our Second Report, Part III, Chapter 3.) As the Deputy Commissioner was unlikely to turn down his Commissioner's request and in any event that aspect of the procedure was no longer relevant after July 1, 1974, our focus is on the Solicitors General from the mid-1960s. They took upon themselves, as a matter of administrative control, to review any proposed application for a warrant. They were in much the same position in fact (although not in law) as are Solicitors General have been since July 1, 1974, under section 16 of the Official Secrets Act, pursuant to which they issue warrants. Just as we have, in our Second Report, Part III, Chapter 3, commented upon the several legal issues that have gone unnoticed and unattended since 1974, here we note that before July 1, 1974 as well the procedure provided fertile ground for legal error. It is not so much a matter here of the R.C.M.P. misleading Solicitors General, as that no one appears to have noticed that a practice that lacked legal foundation had developed. The fact that this can so easily happen when matters that are subject to so little independent scrutiny are involved is one of the grounds upon which we have made our recommendation that the final decision as to whether the facts comply with the statute should be made by a judge.

DETAILED SUMMARY NO. 36

1. A lawyer wrote to us raising several interesting legal issues and specific problems such as:

- (a) the problem of surreptitious entries and electronic surveillance pursuant to warrants under the Official Secrets Act;
- (b) the question of security certificates issued under the Immigration Appeal Board Act and the new Immigration Act and the criteria for admissibility to Canada in immigration cases;
- (c) the lawfulness and appropriateness of certain disruptive operations against various political groups; and
- (d) the possibility that he might have improperly been the target of Security Service surveillance.

2. The first two topics referred to above are dealt with in our previous Reports. The legal issues surrounding surreptitious entries and electronic surveillance were discussed in our Second Report, Part III, Chapters 2 and 3, and Part V, Chapter 4. Our opinions as to Security Screening for immigration purposes are outlined in our Second Report, Part VII, Chapter 2. The subjects of countermeasures and disruptive tactics, particularly those carried out under the code name Checkmate, are dealt with in our Second Report, Part III, Chapter 7, and Part V, Chapter 6, and in this Report, Part VI, Chapter 12.

3. With respect to the fourth issue, our investigation has revealed that the complainant was the subject of several volumes of Security Service files. He first came to the attention of the R.C.M.P. because of his contact with the missions of a foreign country in Canada and his visit to that country as a member of a "protest committee".

4. A high-ranking R.C.M.P. officer, in a letter to the Solicitor General's office stated:

During mid-September a second untested source in a position to know, advised of learning that [the complainant] (a barrister who has been known to represent revolutionary youth elements in legal matters and who, along with his legal partner, alludes to be sympathetic to the revolutionary movement in Canada) was extensively involved in the planning of [a prison fracas.] [The complainant's legal partner] is defending one of the penitentiary inmates, apparently charged as a result of the riot, and is allegedly working out of a commune in the area. According to our source [both the complainant and his partner] have allegedly infiltrated some level of the Penitentiary staff.

We are presently endeavouring to develop further intelligence regarding these matters and you will be kept advised accordingly.

5. The following year, for a six-month period, the Security Service monitored the office telephone of the complainant. This operation was conducted under the authority of the Official Secrets Act. The request for the authority to issue the search warrant under section 11 of the Official Secrets Act read as follows. The entire text of the body of the request is hereunder reproduced with appropriate deletions as to names, date and places.

The Honourable, the Solicitor General, authorization is hereby requested to issue Search Warrant under section 11 of the Official Secrets Act for the purpose of intercepting telephonic communications relative to the activities of [the complainant] Barrister, whose office is located at , telephone number , a person suspected of being engaged in activities which constitute offences against the said act.

[The Complainant] is a supporter of both the non-violent sectors of New Left and Communist groups. In his capacity as a barrister, he had recently defended in court [an American fugitive]. His law partner is a member of a militant neo-Marxist revolutionary youth organization; and, his secretary is a sister to a nationally prominent Maoist.

6. The information to obtain a search warrant, a document which forms part of the documentation to obtain authorization for the communications intercept, reads in part as follows. Appropriate deletions as to names, dates and places have been made.

The information of [R.C.M.P. officer] taken this 1st day of September in the year One Thousand Nine Hundred and Seventy Two who says that [the complainant] whom/which he believes to be directly or indirectly associated with a foreign power is or is about to communicate information by telephone which is calculated to be or might be or is intended to be directly useful to a foreign power contrary to Section 3 of the Official Secrets Act. . .

7. Following this period of interception the R.C.M.P. analysed the information obtained and concluded as follows:

19. There is no reason to believe that [the complainant] will cease to be anything but a "movement lawyer" because he has the trust, respect and confidence of the "movement people". Should he become a Member of Parliament, he would be removed from those people from whom he draws his political strength, and so would perhaps become less political.

20. In my opinion [the complainant] does not represent a threat from the information that has been presented as he is not an instigator or planner of action and he is too much of an individualist to commit himself to a party that demands submission to a line. It might be possible that [he] will eventually become only a source for the leftist people to use when wanting examples of injustices in society.

Conclusion: This is considered an excellent example of a thorough source debriefing over a lengthy period of time. The goal in this instance was an attempt to obtain an assessment of [the complainant] who consistently waffles in the grey area. There is little doubt that assessments such as this are worth the time and effort expended in this connection.

8. The R.C.M.P. still devotes some time to the monitoring of certain of the activities of the complainant. There has, however, been only one instance of electronic surveillance and that is the episode referred to above.

9. In light of the conclusion reached by the Security Service at the completion of their electronic monitoring of the complainant we must wonder at the accuracy of the statements made in the information to obtain the search

warrant as outlined above. As was the case with Detailed Summary No. 35, it appears that the standard form of "Information" to be sworn in support of an application for a search warrant in counter-espionage cases, as had been drafted by the Department of Justice in 1954 was used, quite inappropriately and incorrectly, in a factual situation that had nothing to do with counter-espionage. These two cases were not isolated. This practice had developed over a period of years and the members of the R.C.M.P. involved in the administration of this technique do not appear to have been conscious that section 11 was being used in circumstances when the facts were such that it was entirely fanciful to swear that there was belief or suspicion that an offence would be committed under the Official Secrets Act. The failure, whether by Solicitors General or members of the R.C.M.P., to detect and prevent this abuse of power, however unintentional it may have been, affords a signal demonstration of the need to import a judicial element into the process of deciding whether electronic interception should be permitted, as we recommended in our Second Report, Part V, Chapter 4.

CHAPTER 11

THE TREATMENT OF DEFECTORS

General

1. We have reviewed the policy of the Government of Canada, as it has developed during the past 35 years, toward persons who defect from the service of certain foreign countries and wish to settle in Canada and have information of intelligence value. It would be unwise to publish the details of this history or of the present policy, although we shall provide those details for the eyes of the Governor in Council. For public purposes, it suffices to say that a rational and generous programme of support for such persons has been established by the government over a period of many years.

Mr. Igor Gouzenko

2. Mr. Igor Gouzenko did not get in touch with us to complain about the R.C.M.P. However, complaints attributed to him in the press in 1980 caused us to have members of our legal staff review the R.C.M.P. files concerning the relationship between him and his wife, on the one hand, and the Government of Canada and the R.C.M.P. on the other. Our staff also interviewed Mr. and Mrs. Gouzenko to determine whether certain of his complaints were well-founded.

3. It will be recalled that in September 1945, Mr. Gouzenko, accompanied by his wife, delivered documents to the R.C.M.P. which he had taken from the Soviet Embassy in Ottawa, where he had been employed as a cipher clerk. The documents and his testimony formed the basis of the R.C.M.P.'s investigation and the Royal Commission on Espionage, commonly known as the Taschereau-Kellock Commission. In turn, there ensued prosecutions that led to a number of convictions. The documents and his testimony disclosed the existence of espionage networks in Canada and elsewhere, and enabled the identification of many members. In its final Report, dated June 27, 1946, the Commission said of Mr. Gouzenko:

He has undoubtedly been a most informative witness and has revealed to us the existence of a conspiratorial organization operating in Canada and other countries. He has not only told us the names and cover names of the organizers, the names of many of the Canadians who were caught "in the net" . . . and who acted here as agents, but he has also exposed much of the set-up of the organization as well as its aims and methods here and abroad.

(p. 11.)

Again, the Commission said:

In our opinion, Gouzenko, by what he has done, has rendered great public service to the people of this country, and thereby has placed Canada in his debt.

(p. 648.)

4. We have not attempted to examine in depth the allegations that Mr. Gouzenko is reported to have made to the press that the intelligence he provided was not used effectively by the R.C.M.P. or by the Royal Commission beyond those individuals who have been publicly identified. To attempt to review the uses to which that intelligence was put in Canada or elsewhere would be beyond our resources. However, we have inquired into the following allegations, attributed to Mr. Gouzenko in the (Toronto) *Sunday Star* on September 7, 1980:

... they ... have complaints about their treatment in Canada.

They cite the long fight over their daughter's birth certificate and persistent rumours they have heard of government personnel ripping off official funds in their name.

They've also been told that government cheques, supposedly for their support, were forged in their name between the time of their defection until 1962, when they began receiving a \$500-a-month pension.

Gouzenko insists he didn't receive a cent of government money until 1962 and supported his family on his own until then.

Five years ago, then Solicitor General Warren Allmand said in a written answer in the House of Commons that "from 1946 to 1962, Mr. Gouzenko was looked after entirely by the Canadian government".

When the *Sunday Star* recently asked the Solicitor General's department to double-check the facts, it took four days for officials to say: "We can't tell you anything. It's classified".

Our findings are as follows in regard to these matters.

(a) *The daughter's birth certificate*

5. When Mr. and Mrs. Gouzenko defected, Mrs. Gouzenko was pregnant. A daughter was born. Some years later the Gouzenkos wanted to obtain a birth certificate for their daughter. As the birth had not been registered normally, the authorities required sufficient independent proof of the birth and where it had occurred. The examination of R.C.M.P. files discloses that former members of the R.C.M.P., who had the personal information necessary, eventually co-operated in order to provide the necessary evidence. We note that the issue of obtaining a birth certificate arose first many years ago, although it was not pressed by the Gouzenkos until recent years. Nonetheless, the importance of providing such documents for use in modern society is undeniable. Birth certificates and other forms of identification are vital; any delay in providing such elementary tools for the resettlement of defectors (or, indeed, any individual who needs a new identity) is difficult to excuse. We appreciate that existing laws may have *seemed* to pose an obstacle to legally obtaining such documentation. However, in due course the birth certificate was obtained lawfully and it is unfortunate that the same steps were not taken earlier.

(b) *Their financial affairs*

6. The best framework for our report on these allegations is to quote in full the Parliamentary Question in 1975, and its answer by the Solicitor General, the Honourable Warren Allmand. The relevant part of Question No. 2332, put by Mr. Tom Cossitt, M.P., was as follows:

What are all the reasons that a government pension was not given to Mr. Igor Gouzenko from 1946 up to the time the government of the Right Honourable John G. Diefenbaker took such action in 1962?

Mr. Allmand's reply was as follows:

From 1946 to 1962 Mr. Gouzenko was looked after entirely by the Canadian government. Since 1962 he has been the recipient of a monthly stipend.

Mr. Allmand's reply does not appear to have come to the attention of Mr. and Mrs. Gouzenko for some time. They did, however, write to Mr. Allmand's successor, the Honourable Francis Fox, in September 1977, about the answer. They also spoke of it to our counsel, to whom they stated that they did not understand it. The phrasing of the statement has led them to suspect that Mr. Allmand was under the impression that the Government of Canada, in the years 1946 to 1962, was the sole source of their financial support. As it was principally their substantial independent income that supported them during those years, they came to suspect that government funds intended for them had been diverted, and that Mr. Allmand was ignorant of that fact. Otherwise, why would Mr. Allmand have made such a statement?

7. We have reviewed the history of the matter carefully, as it is disclosed by R.C.M.P. files. The story, in almost every aspect, is a crystal clear one. It is not true that from 1946 to 1962 Mr. Gouzenko was looked after "entirely" by the Canadian government. He did, of course, have income from the two books and magazine articles which he wrote and from various media interviews. However, in 1962 the Canadian Government did in effect retroactively provide some significant financial support in respect of those 16 years, and Mr. Gouzenko is well aware of its details. Mr. Allmand's statement would have been accurate if it had reported those facts. The inaccuracy in his statement appears to have been unknown to Mr. Allmand, as the answer was drafted by the R.C.M.P. Security Service. However, our examination of the files reveals that the draft originally suggested by a senior officer (the Officer in Charge of the Counterespionage Branch) was:

From 1946 to 1962, Mr. Gouzenko was looked after entirely by the Canadian Government *apart from some personal income he had*, and in 1962 a monthly stipend was commenced.

[Our emphasis.]

Somehow, and for reasons we cannot understand, the words underlined were deleted from the draft reply sent from the Director General's office to Mr. Allmand. The answer, as originally drafted, would have been much more accurate than the one given in the House of Commons. Our examination of the files has not disclosed that there was any sinister design that may reasonably be

attached to the answer given in the House of Commons. From 1946 to 1962 there were no government or R.C.M.P. funds intended for the benefit of Mr. Gouzenko that were improperly applied. Thus, we can find no support for the suspicions of Mr. and Mrs. Gouzenko in regard to this matter.

8. As a final check, we requested the Treasury Board Secretariat to determine whether any payments to the Gouzenkos had been authorized or made during this 16-year period. We were advised by letter, dated April 23, 1981, that Treasury Board "files could not be expected to contain records of payments themselves; those would be found in the files of the paying agency, in this case the R.C.M.P.". The Secretariat confirmed that appropriate authority existed for a number of payments to and on behalf of the Gouzenkos including the following:

- (a) police protection to be provided to Mr. Gouzenko and his family, as might be deemed necessary by the Commissioner of the RCMP pursuant to a decision of March 20, 1947;
- (b) a living allowance of \$500 a month to Mr. and Mrs. Gouzenko, approved on July 11, 1962;
- (c) change of the \$500 a month allowance referred to at (b) above, making it payable to the National Trust Company and to be applied in accordance with a trust agreement of April 10, 1963, approved on April 11, 1963;
- (d) various payments since 1968 for house repairs and related matters, as well as increases in the monthly living allowance.

In the letter they added:

...I note that the 1947 decision concerning police protection would clearly involve benefits to Mr. Gouzenko, both direct and indirect, but not necessarily any commitment to periodic or lump-sum payments. Our review of RCMP files, though by no means exhaustive, indicates that Mr. Gouzenko received \$1,000 from the Government in 1958. The 1947 protection order could be construed as authorizing such a payment, by exception, in relation to the security risk posed by Mr. Gouzenko's representations for financial aid, but clearly would not have covered the broader commitment involved in the decisions of 1962 and 1963.

There is no indication, however, that any authority existed for regular payment of sums of money during the 1946-62 period, as alleged by the Gouzenkos, and, to the extent of the records available, we are satisfied that no funds intended for the Gouzenkos were diverted.

9. Before leaving the subject of Mr. Gouzenko's finances, it is appropriate to quote the remainder of the questions put by Mr. Cossitt, M.P., in 1975, and the answers given by Mr. Allmand:

2. Is the government aware (a) that because of the special circumstances under which he must live, Mr. Gouzenko cannot earn income from regular employment (b) that his present pension income is inadequate to maintain a decent standard of living and that as a result of this he is indebted to a bank in the amount of thirteen thousand dollars (c) that the normal cost of living

additions made to his pension has only been applicable for the past several years and is insufficient?

3. Has the government given serious consideration recently to the words of the 1946 Report of the Royal Commission on the Gouzenko case. "In our opinion, Gouzenko by what he has done, has rendered great public service to the people of this country and thereby has placed Canada in his debt"?

4. Will the government increase Mr. Gouzenko's pension by an adequate amount?

Hon. Warren Allmand (Solicitor General):

2. (a) Originally Mr. Gouzenko did live under special circumstances and there was fear for his life; however the security requirement has greatly diminished *and there is now no reason for Mr. Gouzenko not to seek employment*, (b) Mr. Gouzenko's present pension income is approximately \$1,050.00 per month, tax free, which was approved by Treasury Board and is considered adequate. (c) The normal cost of living increases have been granted during the past several years and are in line with the average industrial wage for the particular area of his residence.

3. The words of the 1946 Report of the Royal Commission were appropriate at the time and the Canadian Government has provided adequate reward for his services.

4. Mr. Gouzenko's pension is reviewed annually and will be reviewed again in 1975 bearing in mind the cost of living and the average industrial wage increases for his particular area of residence.

[our emphasis]

On the basis of our examination of R.C.M.P. files, we confirm the accuracy of those answers as at 1975. We should add that since then the annual reviews have taken place and Mr. Gouzenko's pension, which is treated as tax free, is now in the amount of \$1,667.00 a month.

10. In our opinion, the Canadian Government has been reasonable and generous with financial support for Mr. Gouzenko over the years. Some details of the support are given above, but there are other details, the publication of which we would consider undesirable.

11. We shall now report briefly on some other allegations or suspicions expressed by Mr. and Mrs. Gouzenko to our counsel. There are four allegations:

(a) Mr. Gouzenko believes that such criticisms or negative statements as have appeared about him from time to time in the press or books have resulted from stories planted by the R.C.M.P. He suspects that those within the R.C.M.P. who are responsible are Soviet infiltrators determined to discredit him. There is no indication in the R.C.M.P. files concerning him that any such stories or comments have originated with the R.C.M.P. Whether individual members or past members have discussed him with journalists, we, of course, have no way of verifying.

(b) Mr. Gouzenko suspects that in January 1954, the R.C.M.P. attempted to kill him. He thinks that that is the explanation for the manner in which

he was driven to a meeting with United States Senator William E. Jenner, Chairman of the Internal Security Sub-committee of the United States Senate Committee on the Judiciary. The meeting was held at a location near Ottawa. The R.C.M.P. files contain reports on the matter, from which it is quite apparent that the R.C.M.P. member charged with the responsibility of driving Mr. Gouzenko to the meeting took "imaginative" steps to avoid individuals who were attempting to pursue them. There is no indication whatever in the files of any intention to harm Mr. Gouzenko. Mr. Gouzenko suspects that a statement that was drafted for possible use by the Minister of Justice was prepared in the event of his death at that time. The file clearly shows that it was prepared more than one year after the trip to Ottawa, and that it was intended for use in the event that Mr. Gouzenko's identity was revealed.

- (c) Mr. Gouzenko alleges that late in the 1950s the Force may again have intended to get rid of him. He says that one of his guards casually suggested that he go to Cuba to live. This, he says, occurred a few months before Fidel Castro's rise to power. Mr. Gouzenko suspects that some senior member of the Force attempted, through the guard, to encourage him to travel to Cuba, and that the senior member knew that Castro, backed by the Soviet Union, was about to seize power. We find no indication in the files that this suspicion of Mr. Gouzenko's has any foundation.
- (d) Mr. Gouzenko suspects that the R.C.M.P. was responsible for the disclosure of his true identity to a refrigerator repairman in the mid-1950s. The file discloses quite the contrary: that Commissioner McClellan himself was in contact with the repairman, after the R.C.M.P. learned of the repairman's intention to publish an article on the Gouzenkos, to attempt to dissuade him from proceeding with the publication. However the repairman originally came to identify Mr. Gouzenko, it is apparent that Commissioner McClellan's conduct was inconsistent with an intention on his part that Mr. Gouzenko's assumed identity and whereabouts be disclosed publicly.

12. We recommend that the government address its attention not only to what portions of this chapter, dealing with the Gouzenkos, should be published but also to what portions not published should nonetheless be reported to Mr. and Mrs. Gouzenko in some fashion.

Conclusion

13. We are satisfied in general with the treatment afforded Mr. Gouzenko and his family. Nonetheless, we express concern over the nature of Force files kept on the Gouzenko family over the years. We have no doubt that the intimate relationship which necessarily has existed between the Gouzenkos and the Force over the past 36 years has given rise to tensions and legitimate complaints, both on the part of the Gouzenkos and on the part of the Force. (It must be remembered that Gouzenko was also Canada's first major defector; the novelty of the defector problem likely also was responsible for some of the

tensions that arose). Furthermore, we appreciate that the adaptation to the Western way of life posed problems for the Gouzenkos, particularly in their handling of financial affairs. Yet we question why the Force's files tend to emphasize criticism and ridicule of Mr. Gouzenko. A member newly assigned to some aspect of the administration of the Force's relationship with Mr. Gouzenko could only, upon reading what may best be described as inflammatory statements, form the opinion that Mr. Gouzenko was a continual nuisance, of little or no value to this country. The unflattering editorializing that permeates R.C.M.P. reports on dealings with Mr. Gouzenko could only have served to predispose any reader to hold Mr. Gouzenko in low esteem, without permitting him the opportunity to form an independent assessment of Mr. Gouzenko's character or worth. We find this sort of editorializing unnecessary and damaging, and we have little doubt that relations between the Force and the Gouzenkos have been made more difficult by the fact that those reviewing the files or becoming aware of their contents would thereby become disposed to treat Gouzenko as a constant troublemaker.

14. A second concern arises with respect to the defector policy itself. It must be remembered that defectors are human. Many have unusual personality traits; otherwise they might not have defected in the first place. The human element in the treatment of defectors is often heightened by the presence of their families, who have special problems and fears of their own, as we have seen in the Gouzenko case.

15. We wish here to emphasize our belief in the importance of paying heed to the human needs of resettlement. A defector should not simply be drained of all useful intelligence information and then ignored in so far as his human needs are concerned. In saying this, we are not suggesting that this has been the case in Canada. Nonetheless, we wish to make it clear that our defector policy must be able to take into account not only those whose defection and resettlement run relatively smoothly, but also the expectations of those who experience difficulties upon resettlement. (We note that a satisfied defector can be of considerable value in encouraging others.) In fact, we suggest that individuals dealing with defectors should accept difficulty as the norm in handling defectors. The adoption of such an attitude will undoubtedly ease the tensions that we have seen are likely to develop between defectors and their handlers.

16. We do not feel that the R.C.M.P., or, in the future, Canada's security intelligence agency, should be the organization responsible for formulating policy with respect to the human needs of defectors. That is not and should not be the function of the Force or the security intelligence agency, which properly should be concerned with receiving defectors, providing physical security to defectors, and gathering useful intelligence from defectors. In effect, what is needed is a person or body, independent of all other interested groups (including the Department of External Affairs or the security intelligence agency), to give attention on a continuing basis to defector policy.

PART V

SPECIFIC CASES REFERRED FOR POSSIBLE DISCIPLINARY ACTION

INTRODUCTION

1. The incidents which we describe in this Part involve conduct which, in our view, does not require reference to an appropriate authority for determination as to whether there ought to be prosecutions. The conduct of the R.C.M.P. members is such, however, that we consider that it ought to be reviewed to determine whether internal disciplinary proceedings should be brought against such persons as are still serving members of the R.C.M.P.

2. Each chapter in this Part relates an incident, or incidents, falling within the category of conduct which we described in Part III, Chapter 1, of our Second Report as follows:

The common thread which we have detected running through these incidents is that of a willingness on the part of members of the R.C.M.P. to deceive those outside the Force who have some sort of constitutional authority or jurisdiction over them or their activities. We have come to this conclusion reluctantly and regretfully because in our view it might well be the most serious charge which we are levelling against the Force in our Report. Nevertheless, we are convinced that the practice existed. We have received evidence that federal Ministers of the Crown responsible for the R.C.M.P. were misled by the R.C.M.P. and that on other occasions relevant or significant information was intentionally withheld from Ministers. There is evidence that the same thing has occurred at the provincial level with respect to a provincial minister. There is also evidence that there was a similar approach adopted by the Force in dealing with senior public servants.

It is not only the chapters of this Part which contain elements of deceit. Some of the chapters of Parts IV and VI also describe conduct of the same nature. However, for reasons explained in the introduction to Part IV, we are not making recommendations as to referral for possible disciplinary proceedings with respect to conduct examined in the chapters of that Part, whereas the conduct reviewed in the chapters in Part VI may, in our view, constitute not only conduct that may give rise to disciplinary proceedings but also illegal activity, and our report as to those forms of conduct is therefore not included in this Part.

CHAPTER 1

MEMORANDUM OF AN OFFICER OF THE R.C.M.P. CONCERNING THE INCOME TAX

Summary of facts

1. In Part III, Chapter 6, of our Second Report we described the circumstances surrounding a memorandum, dated January 19, 1968, sent by Inspector J.G. Long to Chief Supt. J.E.M. Barrette. In the memorandum, Inspector Long acknowledged that the provision of information to the Security and Intelligence Directorate by a source in the Department of National Revenue was a violation of the Income Tax Act. He therefore recommended that no opinion should be sought from the Department of Justice on the question since that opinion could only be that there was a contravention of the Act and receipt of such an opinion would place the Security and Intelligence Directorate in the position that, if it continued with the practice, it would be "in contravention of a recent and explicit ruling from the legal officer of the Crown".

Conclusions

2. We acknowledge, of course, that an opinion from the Department of Justice does not determine whether a matter is or is not legal, and therefore, would not have affected the legality of the practice. We consider that, if doubt existed as to legality, it would have been quite improper not to seek an opinion for fear that it would be adverse. However, to acknowledge that the practice was clearly illegal, as Inspector Long had done, and then to recommend that no legal opinion be sought because this would aggravate the situation, is, in our view, even worse and is unacceptable. It shows a complete disrespect for the law and for the legal process within government designed to ensure compliance with the law.

CHAPTER 2

APPLICATION TO PROVINCIAL ATTORNEYS GENERAL FOR LICENCES UNDER SECTION 311 OF THE CRIMINAL CODE

Introduction

1. The summary of facts in this chapter was extracted from the documents which were contained in R.C.M.P. files. We heard no testimony on the topic. We did, however, receive representations in response to notices given by us pursuant to section 13 of the Inquiries Act.

Summary of facts

2. In the early 1960's General Motors supplied their dealers with master keys for GM automobiles. No controls were placed on the sale or possession of those keys. Consequently, they became available commercially. There were large increases in theft of GM automobiles. In an attempt to combat the increased theft, section 311 of the Criminal Code was passed in 1969 and came into force on January 1, 1970. That section reads:

311.(1) Every one who

(a) sells, offers for sale or advertises in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province, or

(b) purchases or has in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) A licence issued by the Attorney General of a province as described in paragraph (1)(a) or (b) may contain such terms and conditions relating to the sale, offering for sale, advertising, purchasing or having in possession of an automobile master key as the Attorney General of that province may prescribe.

(3) Every one who sells an automobile master key

(a) shall keep a record of the transaction showing the name and address of the purchaser and particulars of the licence issued to the purchaser as described in paragraph (1)(b), and

(b) shall produce such record for inspection at the request of a peace officer.

(4) Every one who fails to comply with subsection (3) is guilty of an offence punishable on summary conviction.

(5) For the purposes of this section, "automobile master key" includes a key, pick, rocker key or other instrument designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles.

It will be noted that simple possession of an automobile master key, without a licence, is an indictable offence.

3. The basic recommendations to the Government of Canada for the new legislation came from the R.C.M.P. Apparently at an earlier Dominion-Provincial Conference on Organized Crime the Minister of Justice of Quebec had raised the matter.

4. In a memorandum of May 13, 1971, Corporal A.E. Fry, a member of the Security Equipment Section in "F" Division (Saskatchewan), noted that a recent request to give evidence in a British Columbia case had identified the problem that no exemption had been provided in the legislation for the possession of automobile master keys by peace officers, and he therefore asked Chief Superintendent E.R. Lysyk, the Officer in Charge of C.I.B. at "F" Division, for policy guidance with respect to his possession of automobile master keys. Cpl. Fry's concern was forwarded by Chief Superintendent Lysyk to Headquarters. At Headquarters the matter was referred to the Legal Branch. In a memorandum dated June 23, 1971, Inspector J.V. Cain, the Officer in Charge of the Legal Branch, advised the Officer in Charge of C.I.B. at Headquarters, Superintendent J.R.R. Quintal, that,

... possession of automobile master keys... is prohibited unless the Attorney General of the Province has issued a licence authorizing their use. Consequently if charged under s. 295 B [now section 311], it would be of no avail for the possessor to show that he had *lawful excuse* to use the keys; the only successful defence would be a licence issued by the Attorney General.

He added a hand-written note to the memorandum as follows:

As a post-script, should Cpl. Fry be required to cross Prov'l Boundaries, it would be necessary (on any operation) for him to have his "licence" from those particular A.G.'s. As an interim solution, perhaps the CIB Officer "F" Div. could write to his 4 Western counterparts seeking a "concensus" on the matter. My feeling is that each would be receptive (each AG that is) especially if the proposal contained the suggestion that "possession by our specified officers is intended to provide a service" as opposed to an objective which is "repugnant" (i.e. need to obtain evidence illegally).

5. By memorandum dated July 2, 1971, Sub/Inspector D.A. Cooper, the Assistant C.I.B. Officer at Headquarters, raised with Mr. Quintal the fact that pick sets had been issued to C.I.B. Services Sections in all divisions as well as to a number of investigators. He pointed out that this also included S.I.B. and the Security Equipment Section at Headquarters. He suggested that licences be obtained from all attorneys general including those of Ontario and Quebec. Mr. Quintal referred the matter, on July 5, 1971, to the Director of Criminal Investigations with the following note:

Sir:

A serious question has been raised which requires a decision.

I think we should

- (1) advise C.O.s which members have been issued with this equipment;
- (2) ask those contract divisions to approach their A.G.s in this regard;
- (3) ask S.G. to obtain licence from A.G. of Ont. and Que.;
- (4) I think they must be to specific members and not the Force in general.

We were advised by Mr. Quintal's counsel that Mr. Quintal was transferred on August 9, 1971, from Officer in Charge, C.I.B., to Departmental Advisor on Bilingualism.

6. In a letter dated October 21, 1971, from Sub/Inspector Cooper to the Commanding Officer of "F" Division, it was pointed out that the request from that Division had "... been examined in the overall context as it relates not only to Security Equipment Section personnel but also G.I.S. and Security Service members across the Force who use lock pick equipment as well as automobile master keys". "F" Division was instructed, as a pilot project, to approach the Saskatchewan Attorney General to obtain a licence. The instructions went on as follows:

In the application for this licence it should be stressed that possession by our Cpl. Fry is intended to provide a service (expert court testimony re examination of master keys, etc., found in possession of a criminal(s)) as opposed to an objective which is repugnant as we do not wish to officially acknowledge at this time that possession of these aids would be used to obtain evidence illegally (surreptitious searches.)

7. By letter dated October 26, 1971, Chief Superintendent Lysyk wrote to the Deputy Attorney General of Saskatchewan to apply for a licence. The text of the letter read as follows:

1. We have on staff at this Headquarters a fully trained member in the field of lock testing and examination and his services are called upon frequently to assist Detachments on investigations in relation to his knowledge and experience in this field.

2. In order for this member to give expert testimony relating to his field, it is essential that he experiment with all types of locking apparatus familiar to the criminal element. In this regard the possession of automobile master keys and lock picks are necessary. I would therefore respectfully request that a licence be issued by the Attorney General pursuant to Section 311(2) of the Criminal Code authorizing Cpl. A.E. Fry of this Headquarters to possess such instruments for the purpose outlined.

3. You will appreciate, I am sure, that should our member be called upon to give expert evidence in relation to his examinations, that some embarrassment would result should it be learned that his examination and tests were conducted with the aid of devices which have not been licenced by the Attorney General.

4. As there is some urgency to this request, I would ask that your early consideration be given, please.

It will be noted that this letter talks only of "lock testing and examination" and makes no mention of the fact that the member would be using the automobile master keys during the course of operations.

8. On November 2, 1971, the Attorney General for the Province of Saskatchewan issued a licence to the member on whose behalf the application had been made. That licence read as follows:

LICENCE UNDER SECTION 311
OF THE CRIMINAL CODE

I, ROY JOHN ROMANOW, Attorney General for the Province of Saskatchewan, by virtue of the power vested in me by section 311 of the Criminal Code do hereby authorize and licence CORPORAL A.E. FRY, a member of the Royal Canadian Mounted Police attached to "F" Division Headquarters, to purchase and have in his possession an automobile master key or keys, and keys, picks, rocker keys or other instruments designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles, and coming within the definition of "automobile master key" contained in subsection (5) of section 311 of the Criminal Code for use in connection with his duties with the Royal Canadian Mounted Police including experimenting with all types of locking apparatus in order that he may be able to give expert evidence in relation to the use of such automobile master keys, picks, rocker keys or other instruments.

DATED at Regina, in the Province of Saskatchewan, this 2nd day of November, 1971.

9. In reporting, by letter dated November 12, 1971, to Headquarters on the receipt of the licence Chief Superintendent Lysyk made reference to Mr. Cooper's letter of October 21, 1971. Mr. Lysyk, in referring to the licence, said:

The term "for use in connection with his duties with the Royal Canadian Mounted Police" is not, in our opinion, restrictive in any way.

Mr. Lysyk made representations to us in writing and through his counsel with respect to his role in this matter. He explained that role in a letter dated January 27, 1981, addressed to his counsel. That letter was filed with us as part of Exhibit UC-40. In it Mr. Lysyk says that he "... cannot recall seeing S/Insp. Cooper's memorandum of 21 October '71 at any time prior to seeing it at your office in January 1981 and feel[s] it is in the realm of good probability "the system" would cause it to by-pass [his] desk".

10. In a memorandum dated November 22, 1971, Sub/Inspector Cooper asked Staff Sergeant Jensen, the N.C.O. in charge of the Security Equipment Section at Headquarters, to provide him with a list of members for whom licences were desired, and he said that he would then refer the list to the Commanding Officer of "O" Division for the necessary action. He pointed out that the licence would be for Ontario only and would be "... only to justify your possession of picks, etc., in Ontario and Quebec (if you want Quebec)". He said that the fact that they did not have licences for the other provinces was not a major concern "... as main requirement other locations would be for court testimony and don't need a licence for that aspect".

11. By a telex dated September 22, 1977, the Commissioner of the R.C.M.P. requested that all operational policies of the Force be reviewed.

12. An undated memorandum, prepared subsequently to November 3, 1977, indicates that in 1966 a complete set of automobile master keys was obtained by the Technical Development Branch of the Security Service through the Crime Detection Laboratories of the R.C.M.P. The memorandum points out that "... it is an offence under section 311 of the Criminal Code of Canada ... for a person to have in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province". The memorandum recommends as follows:

Because these keys have not been used by "J" Operations since they were acquired in 1966, and the legal implications under the Criminal Code of Canada it is recommended that the set of Automobile Master Keys presently held in safekeeping by "J" Operations be returned to Security Engineering Section.

13. In a memorandum dated June 1, 1978, from Inspector D.P. Pederson on behalf of the Assistant Officer in Charge, Security Engineering Branch, to the Director of Protective Policing, section 311 was cited and it was pointed out that members of the Security Engineering Branch and of Security Engineering Sections in the field carried instruments which fell within the definition of automobile master keys. It was stated that, as a first step to complying with section 311, the Branch would like to obtain licences for appropriate members from the Attorney General of Ontario. It was recommended that when that had been completed the Branch should advise divisions to acquire licences for their section members. It was also pointed out that instruments falling within the definition in the Code were common to both the "... routine service and maintenance work [Federal Security Equipment] of the Branch ... as well as [their] operational assistance role, thus Section members involved in both areas should be licenced."

14. In a letter dated June 14, 1978, from Chief Superintendent D.W. McGibbon, Assistant Director, Protective Policing, to the Attorney General of the Province of Ontario, licences were sought for five members of the Security Engineering Branch at Headquarters. In that letter the role of the Branch was described as follows:

The Security Engineering Branch of the Royal Canadian Mounted Police is responsible for planning, developing and coordinating programs for the research, design, development, testing and evaluation of security equipment; structural engineering involving the selection and application of security hardware and systems, structural materials and building designs; and electronic Security Systems to ensure the protection of the assets, property, personnel and information of the Federal Government.

This responsibility includes the service and maintenance of security equipment and locking systems for the Federal Government. In order to perform these duties the Security Engineering Branch technicians are required to have in their possession locksmithing tools, lock picks, or other instruments designed to operate locks and locking systems.

These lock technicians are also involved in the testing and evaluation of locks and locking systems proposed for use by the Federal Government Department.

These technicians must therefore work with all types of locksmithing tools and equipment used to defeat locks and locking systems in order to properly evaluate security equipment.

Included in the mandate of the Security Engineering Branch is the requirement to train R.C.M.P. members to fill Security Engineering field sections within the various Divisions. These trainees are transferred to Ottawa where they spend 12 to 18 months on an in-service training program. Each trainee is under the direct supervision of a senior SEB technician during this training period.

15. On July 19, 1979, licences, as requested, were issued by the Acting Attorney General of the Province of Ontario. They were stated to be issued to the members

... in connection with the performance of their duties as police officers, including the training of police officers under their supervision...

16. In the course of the correspondence leading up to the issuance of the licences the Director of the Crown Law Office in the Ministry of the Attorney General, Province of Ontario, wrote to the Assistant Director, Protective Policing, R.C.M.P., on September 7, 1978, stating as follows:

I apologize for the delay in answering your request for a licence pursuant to section 311 of the *Criminal Code*. It has raised an interesting question. To my knowledge, it is the first application under Section 311 and as such required careful consideration which delayed our reply to you.

In subsequent correspondence from Chief Superintendent McGibbon, no mention was made to the Ontario Attorney General's office of the fact that a licence had been obtained several years earlier in Saskatchewan. The Security Engineering Branch had suggested that the office of the Ontario Attorney General be provided with copies of the material on the "F" Division experience in Saskatchewan but that suggestion did not meet with favourable consideration.

17. According to a memorandum dated November 7, 1979, from Assistant Commissioner J.U.M. Sauvé, the Director of Protective Policing, to the Officer in Charge, Operational Task Force, because General Motors had improved and redesigned their locks "... to the point where these 'master keys' are of little or no concern particularly as the earlier models disappeared from the scene, ..." section 311 of the Code is essentially obsolete. However, because "... the Commissioner directed during the McDonald Inquiry that all operational areas of the Force ensure that they are scrupulously adhering to the letter of the law, this Branch sought and received licences in accordance with 311, ...".

18. By memorandum dated April 25, 1978, from Chief Superintendent R.R. Schramm, the Officer in Charge, Criminal Operations, to the Officer in Charge, Protective Policing, the question of possession of keys was dealt with. Chief Superintendent Schramm states:

... I have concluded that the retention of keys after the expiration of the lawful authority, i.e. Search Warrant, Court Authorization to intercept private communications, Writs of Assistance used in a specific investigation on reasonable and probable grounds, is probably a criminal offence and most certainly contrary to the spirit and intent of existing legislation.

He then discussed section 309(1) of the Criminal Code which deals with house breaking instruments. He instructed that all keys that the Security Equipment Section had "... which fall within the category of house breaking instruments..." be destroyed forthwith. He said that the Security Equipment Section must only render assistance to operational units when entry will be made upon premises when there is a valid search warrant, valid court authorization to intercept private communications or when there is a writ of assistance in an emergency situation when it is not possible to obtain a search warrant. He said "... under no other circumstances shall entry to premises be made. This includes entry of private vehicles, etc."

19. By a further memo dated April 26, 1978, from Chief Superintendent Schramm to the Officer in Charge, Detachment Police, the Officer in Charge Divisional Management Audit Unit and the Area Commander of the Security Service in South West Ontario, a copy of the memorandum of April 25, 1978, was forwarded for the information and guidance of all members under their command. He stated that

... it goes without saying that the principles enunciated in the attached memorandum to the O.i/c Protective Policing concerning these matters apply equally to all members and not only to S.E.S. Therefore, should any member have a key(s) which may have been obtained during the course of a previous investigation, such key(s) is to be destroyed forthwith.

He added:

As all members will appreciate, the Force must at all times carry out its duties within the bounds of the law. What necessarily flows from this fundamental principle is that we must ensure the legality of *all* our investigative practices and procedures. This is essential in order that the Force may continue to maintain the trust and confidence of the people of Canada.

Conclusions and recommendations

20. There are two aspects of this matter with which we propose to deal. The first is the application to the Attorney General of the Province of Saskatchewan for a licence under section 311 of the Criminal Code. The second is the possession of automobile master keys by members of the R.C.M.P. after passage of section 311 of the Criminal Code.

21. Counsel for Messrs. Cain, Cooper, Lysyk, and Quintal submitted that there is a distinction to be made between the meaning of the words "deceive" and "mislead". He said that the word "deceive" included an element of intent whereas the word "mislead" did not necessarily include any intent. He cited in support of his submission several judicial decisions interpreting the meaning of those words in different statutes. We accept the distinction drawn by him and when we use the words "deceive" or "deception" we mean that what was done was done, in our opinion, with the intention to mislead.

22. We are shocked by the deception practised on the Attorney General of Saskatchewan by the members of the Force involved. The documentation clearly discloses that the intended recipient of the licence would be using the automobile master keys in his possession for two purposes: one — "lock testing and examination" — was disclosed in the application; the second — the use of the keys to surreptitiously enter vehicles during the course of specific operations — was intentionally withheld from the Attorney General. We are also shocked that the suggestion that the matter be approached in this fashion first came from Inspector Cain, the Officer in Charge of the Legal Branch of the R.C.M.P. He clearly counselled not making a full disclosure to the attorneys general of the four western provinces when he wrote that "... each would be receptive (each A.G. that is) especially if the proposal contained the suggestion that" possession by our specified officers is intended to provide a service "as opposed to an objective which is" repugnant "(i.e. need to obtain evidence illegally)".

23. It is disturbing that Mr. Quintal did not nip this matter in the bud. Having received Mr. Cain's memorandum of June 23, 1971, Mr. Quintal appears either not to have recognized the seriousness of what Mr. Cain was counselling or to have ignored it. We note that in his handwritten memorandum of July 5, 1971, to the Director of Criminal Investigations, in which he makes his recommendations as to what he thinks the procedure ought to be to resolve the problem, he makes no reference to Mr. Cain's proposal.

24. Unfortunately, Mr. Cain's counselling was picked up by Sub/Inspector Cooper in his instructions to the C/O of "F" Division. Those instructions were followed, without further question, by Chief Superintendent Lysyk in making the application by "F" Division. However, because of the representations made to us by Mr. Lysyk we are not prepared to conclude that he was aware of the intention to deceive the Saskatchewan Attorney General. There can be no excuse for the conduct on the part of those who participated in this deception. We recommend that this chapter of our Report be forwarded to the Attorney General of Saskatchewan.

25. The second point of concern to us is the continued possession by members of the Force of automobile master keys after passage of section 311 of the Criminal Code. Immediately upon passage of that section it should have been obvious to the Force that possession of an automobile master key in a province, without a licence from the Attorney General of that Province, was an indictable offence. That fact does not appear to have been apparent to anyone until 1971 when it was raised by Cpl. Fry in "F" Division. In June 1971, Inspector Cain, the Officer in Charge of Legal Branch, advised the Officer in Charge of C.I.B. that anyone in possession of an automobile master key would have no defence unless the licence had been issued by the Attorney General. With the exception of the licence issued to one member in "F" Division, no further licences were issued until the Attorney General of Ontario licenced five members in July 1979. It is obvious from the documentation that between 1971 and 1979 many members of both the C.I.B. and the Security Service were in possession of automobile master keys. Such members included both investigating officers in the field and personnel in the Security Equipment Section and

Technical Development Branch at Headquarters. It was not until April 1978 that instructions were given to members of the Force to destroy all keys in their possession which were not being used in current investigations in which there was a valid search warrant, valid court authorization to intercept private communications or a writ of assistance. During the seven-year period, as far as can be determined from R.C.M.P. files, from the time the legal opinion was given by the Officer in Charge of the Legal Branch until the order was given to destroy all keys, with the exception of Mr. Quintal's memorandum to the D.C.I., no concern appears to have been expressed about the fact that all members of the Force who were in possession of such keys were probably in violation of the Criminal Code. This is a serious illustration of an attitude within the Force that the law did not apply to it.

CHAPTER 3

DESTRUCTION OF CHECKMATE FILES

Introduction

1. In our Second Report, Part III, Chapter 7, we referred briefly to some countering measures carried out by members of the Security Service in the years 1971 to 1974 under the umbrella code name of Checkmate. In Part V, Chapter 6, of the Second Report we discussed the kinds of countermeasures which we think may appropriately be carried out in the future by Canada's security intelligence agency. In Part VI, Chapter 12, of this Report we discuss a number of the specific Checkmate operations. In the present chapter we examine the circumstances in which members of the Security Service destroyed the contents of files relating to those operations and the general file that contained discussion about proposed but unexecuted operations. Most of the evidence with respect to the destruction of the Checkmate files was heard *in camera* in Ottawa on November 6, 7, 13, 18 and 25, 1979, and on February 12, 1980. The testimony of former Commissioner Nadon was heard in public on October 30, 1979 (Vol. 136). *In camera* testimony was given by Commissioner Nadon, Superintendent Robert Gavin, Superintendent R. Yaworski, Chief Superintendent G. Begalki, Staff Sergeant James Thomson, Staff Sergeant Ervin Pethick and Sergeant R.G. Hirst. The *in camera* testimony is found in Volumes C57, C60, C63, C64 and C84. It was released publicly in edited form in Volumes 300, 305, 302, 303, 304 and 306 (listed in the corresponding order). Representations were made by one of the participants and his counsel, in response to a notice given pursuant to section 13 of the Inquiries Act (Vol. C129).

Summary of facts

2. The files relating to Operation Checkmate were destroyed by the Security Service after undergoing two separate and independent internal file reviews — one in 1974-75 and one in 1977.

(a) Phase One (1974-75)

3. Staff Sergeant Yaworski was the N.C.O. responsible for the Special Operations Group (S.O.G.) that supervised Operation Checkmate. In a series of discussions in November or December 1974 with Deputy Director General (Operations) Draper, Staff Sergeant Yaworski recommended that the Checkmate files be destroyed. Mr. Yaworski has no recollection as to whether his immediate superior, Superintendent Begalki, was part of these discussions. After discussing other alternatives, including the complete destruction of the files, Mr. Yaworski and Mr. Draper eventually decided to destroy those parts

of the Checkmate files which related to mere proposals for operations, and, in all Checkmate files which related to completed operations, to prepare summaries before eliminating certain materials from the files. Mr. Yaworski then instructed two members of the Security Service — Sergeant Hirst and Corporal McMartin — to carry out the actual destruction. The Checkmate files comprised approximately 25 volumes in total, and those which contained only proposals for operations were sent immediately to "F" Operations (Records Management) for destruction. No file assessment forms were prepared for them. Mr. Hirst and Mr. McMartin then prepared summaries of the contents of those files which related to completed operations. Mr. Yaworski personally reviewed all of these summaries. After returning these files to Mr. Hirst, Mr. Yaworski says that he assumed that these Checkmate files and the attached summaries would then be returned to form part of the permanent records registry system within the Security Service. Mr. Yaworski reported verbally to Mr. Draper in May 1975 that no attempt was made to record the contents of the files relating to the proposed review process. Although Mr. Begalki was Mr. Yaworski's immediate superior, Mr. Yaworski has no recollection whether he also reported to Mr. Begalki; nor does he know whether Mr. Draper discussed this destruction with Mr. Dare. In a subsequent telex authorized by Mr. Draper, instructions were given to individual field units to destroy any corresponding Checkmate files that they might hold.

4. Mr. Yaworski testified that he recommended the destruction of the Checkmate files to Mr. Draper for one principal reason. By November 1974 he was of the opinion that many of the operations which had been carried out under the code name 'Checkmate' were "wrong". He came to that conclusion in large part due to his increasing awareness of mounting public criticism in the United States of comparable programmes which had been carried out by the F.B.I. Since there had been recent instances of leakage of government documents, Mr. Yaworski was very much concerned about the possibility of the disclosure of what he considered to be "very sensitive" and "very explosive" information and about probable consequent embarrassment to the Security Service as a whole. The purpose of the summaries, as he explained it in his testimony, was simply to reduce the volume of material on the files so as to lessen the possibilities of exposure of Operation Checkmate. Although Mr. Yaworski admits that the Security Service would thereby be placed in a less advantageous position in the event it became necessary to answer future questions about Checkmate, he nevertheless insists that his aim was to reduce the risk of leaks to the media or to the government, by eliminating the bulk of the documents on the files. In giving instructions for the actual destruction, Mr. Yaworski relied upon the fact that the Deputy Director General (Operations) had given his consent to destroy the files and, therefore, Mr. Yaworski says, he did not consider the standard criteria for destruction contained in the "I" Directorate Manual and the Specific criteria for destruction applicable to the "938" category which had been assigned to the Checkmate files. Mr. Yaworski was able to overcome the objections of the N.C.O. in charge of "F" Operations by persuading him that the Checkmate files did not properly belong to category "938" and by indicating to him that the Deputy Director General

(Operations) had already given his approval for this particular destruction procedure.

5. Mr. Hirst says that he regarded the instructions he received as an unusual procedure since it was not carried out according to the regular file review programme. The files were divided between Mr. Hirst and Mr. McMartin, with the former given approximately 18 to 20 files and the latter the rest. Mr. Hirst prepared only five or six summaries which he gave to Mr. Yaworski to review. No copies were made of any of these summaries. Mr. Hirst had complete discretion in this review which took place sometime in late 1974 or early 1975. He did not consider any of the material on the files to be of potential operational value to any other branch. He therefore removed all documents except extracts from other files and any independent research that had been done by the section. No file review forms were completed. He was personally responsible for placing in the secret waste all of the material which had been earmarked for destruction. After typing one or two of his handwritten summaries, he placed them with the remainder of the files in a safe and, when he was transferred in December 1976 left them in the custody of the N.C.O. in charge of the S.O.G. All of this material was apparently in the same condition when he returned to review the files in 1977.

6. When he was first given the Checkmate files to review, Mr. Hirst recommended to Mr. Yaworski against total destruction for two main reasons:

- (1) The impossibility of eliminating an entire category of files because of the nature of the extracting process whereby references to each of the Checkmate files would appear in many other files scattered throughout headquarters and the division and,
- (2) the impossibility of destruction of a whole category of files since some portions of the Checkmate files would have already been copied at the command level.

7. In spite of the reservations expressed by Mr. Hirst, Mr. Yaworski decided to proceed with his and Mr. Draper's alternative plan for partial destruction.

(b) Phase Two (1977)

(i) Evidence of Sergeant Hirst

8. According to Mr. Hirst, when he returned to the S.O.G. in March or April of 1977, Chief Superintendent Begalki instructed him, in the presence of Staff Sergeant Pethick, to complete the review of the Checkmate files.

9. Mr. Hirst testified that, when Chief Superintendent Begalki instructed him to finish the review of the Checkmate files, Mr. Begalki merely indicated that the S.O.G. was being phased out and that the Checkmate files would no longer be of any operational value. Mr. Hirst says that he raised some objections with Mr. Begalki over the proposed wholesale destruction of the files. Mr. Hirst says that he pointed out to Mr. Begalki that a prior review of the files had taken place in 1974-1975 and explained some of the problems which both he and Mr. Yaworski had encountered, at that time, in contemplating the destruction of an entire category of files. Although Mr. Hirst told us that he "discussed" with

Mr. Begalki the potentially "very explosive" nature of what little material was still on the files, he did not tell us whether he explained what he meant by that or that he told Mr. Begalki that the "problems" involved possible illegalities. He has no memory as to what Mr. Begalki said. His testimony is clearly that what he told Mr. Begalki was that in 1974 the main consideration was that the files were no longer of value, and that Mr. Begalki gave the same reason for deciding that they should be destroyed. In carrying out his review, Mr. Hirst decided to destroy almost all of the remaining contents and summaries because he could find nothing of operational or historical value. Having done this, he delivered what was left of the files to Staff Sergeant Pethick.

10. Although Mr. Hirst prepared a file review form for each file, he did not prepare any list of, or report concerning, the material he had destroyed. He himself remembers little of the actual file contents. He had no further discussions with anyone concerning the destruction which he had carried out.

11. In conducting his review, he says that he was never aware of the possible establishment of a Commission of Inquiry or of a possible moratorium on the destruction of files. He was not instructed by Mr. Begalki and did not himself look for any illegalities in the files during his review process.

(ii) Evidence of Chief Superintendent Begalki

12. According to Mr. Begalki, the only review and destruction of the Checkmate files was carried out under his personal instructions in May and June 1977. As Officer in Charge of "D" Operations (the Countersubversion Branch), Mr. Begalki instructed Staff Sergeant Pethick to conduct a review of the Checkmate files with a view to their eventual destruction. Any material which was retained after Mr. Pethick conducted his review was transmitted to another active file. No record was kept of the file to which this information was transferred. The remainder of the files were then sent to "F" Operations for the purpose of undergoing a second assessment. Mr. Begalki approved this portion of the destruction process by writing a memorandum on May 3, 1977, to that effect. He also sent a list of the files to be destroyed to Superintendent Gavin who was Officer in Charge of "F" Operations.

13. In giving his reasons for authorizing this review and destruction, Mr. Begalki said that the S.O.G. was winding down and therefore some of its files had become obsolete. He could see nothing of any future operational or historical value in them. Moreover, he regarded them as superfluous in the sense that the subjects of any reports submitted by deep cover agents, who had been involved in the Checkmate programme, would already be contained in various other files throughout the regular filing system. He distinguished the assessment of the Checkmate files from that of other files (which were reviewed at the same time and were also considered to be redundant, working files) on the basis that material in those files was retained because it was of historical significance. Mr. Begalki says that he believed that the S.O.G. files did not form part of the regular file review lists, and that therefore they were treated separately from other files under review, on a need-to-know basis. When giving the files to Mr. Pethick, Mr. Begalki did not suggest any specific criteria which might be considered. Mr. Begalki says that he did not take into

consideration whether the contents of the Checkmate files fell within the limits of the 1975 Security Service mandate, or the possibility of a forthcoming Commission of Inquiry. Mr. Begalki says that the possible embarrassment to the Security Service in the event of the disclosure of any of the contents of the Checkmate files did not "separately" have a bearing on his decision that the files should be destroyed. He later explained that that was not his reason, and that he did not know the contents of any of the files or that there were any illegalities described in them. He maintains that the lack of intelligence value was the criterion he applied in authorizing this destruction of the files, and which he expected Staff Sergeant Pethick to apply as he went through the files.

(iii) Evidence of Staff Sergeant Pethick

14. Mr. Pethick says that he conducted his review of the S.O.G. files in April 1977. He was assisted in this task by Mr. Hirst who took approximately half of the total number of files. The entire review of nearly 40 files involved two or three days work. Many of the files which Mr. Pethick received were empty except for an opening chit or some extracts. There were no summaries on the files nor did Mr. Begalki request that any summary be made. As a result, Mr. Pethick had no recollection of any of the details concerning the actual Checkmate operations. At most, he says that he only vaguely remembers reviewing a file on an individual. Mr. Pethick says that he retained only three documents: (1) an outline of the finances of either the Communist Party of Canada or a communist front organization, (2) a description of an individual's departure from a suspected communist front organization and (3) a document from an agency outside the Security Service. He says that Mr. Hirst did not recommend the retention of any documents. After completing this review, Mr. Pethick took all the files and the attached file review forms to Staff Sergeant Thomson at "F" Operations. No lists were made of the files, whether of those that were retained or of those that were destroyed. Mr. Pethick did not give any instructions to Mr. Thomson and merely assumed that the files were thereafter destroyed by him.

15. According to Mr. Pethick, Mr. Begalki's sole reason for carrying out this review was to weed out the superfluity of S.O.G. documents arising from the considerable accumulation of files that developed during the period when the S.O.G. was responsible for security at the Olympics. He says that Mr. Begalki never mentioned potential sensitivity of some of the file contents, or suggested the use of any particular criterion, but left the review of the files to the discretion of both Mr. Pethick and Mr. Hirst. Although the Checkmate files had been assigned the "F" Operations category number 938, Mr. Pethick relied almost entirely on the general criteria set out in the "I" Directorate Manual. He saw nothing of operational interest in the files worthy of retention. In conducting his review, Mr. Pethick says that he was never aware of the possibility of a forthcoming moratorium on the destruction of documents or of the establishment of a Commission of Inquiry. Moreover, he says that Mr. Begalki never directed him to consider whether the documents within the Checkmate files fell under the 1975 Security Service mandate. At the beginning of this review, Mr. Pethick learned from Mr. Hirst that a prior review of these files had been carried out. However, Mr. Pethick says that Mr. Hirst did

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not elaborate to him on any of the details with respect to that previous assessment.

(iv) Evidence of Superintendent Gavin

16. About the same time that Mr. Begalki asked Mr. Pethick to carry out a review in "D" Operations of the Checkmate files, he also asked Superintendent Gavin, Officer in Charge of "F" Operations (Records Management) to carry out a subsequent review. Mr. Gavin then designated Mr. Thomson to conduct the actual "F" Operations assessment, which took place some time between May 10 and May 22, 1977. Mr. Thomson, who was given full authority to conduct the review, destroyed the files in their entirety on June 10, 1977. No attempt was made to summarize the files beforehand.

17. Mr. Gavin says that he assumed that Mr. Thomson would rely on the normal destruction criteria provided in the "I" Directorate Manual and on his own personal experience. Mr. Thomson says that the possibility of a forthcoming moratorium on the destruction of files was not a factor in Mr. Gavin's thinking. Mr. Gavin says that he had heard rumours about the possibility of the establishment of some kind of an inquiry, though not about this Commission, but that those rumours in no way influenced his instructions with respect to destruction. The Checkmate files were apparently permanently recorded in "F" Operations under the category number 938 but had been physically maintained in "D" Operations on a need-to-know basis. Until 1971, the category number 938 denoted that the files were to be kept for an indefinite period. With the amendment of the retention schedules in 1971, the policy thereafter relating to the destruction of 938 files was as follows: "Policy relating to the destruction of these files can be found on file". We do not know exactly what that means but at the very least it means that the regular destruction criteria of "F" Operations were not applicable to files in that category. The 938 category referred to confidential human sources files. According to Mr. Gavin, the Checkmate files might have been more properly classified as either organizational or operational files. Prior to the creation of the Operational Priorities Review Committee, such files were always kept for an indefinite period. This meant that each file was to be assessed on its own contents and merits, although the general criteria in the "I" Directorate Manual were usually applied. The organizational and operational files were normally reviewed first by the individual branch using operational criteria and then were sent to "F" Operations where the more established criteria were applied.

18. Mr. Gavin says that he was never aware of any review of the Checkmate files prior to that carried out in May and June 1977.

(v) Evidence of Staff Sergeant Thomson

19. In early May 1977 Mr. Thomson took charge of the Checkmate files which were handed to him personally by Mr. Pethick. Mr. Pethick had also sent over the file assessment forms attached to each file which merely indicated which files had been destroyed and the basis for this. Mr. Thomson has no recollection of any summary being sent over with the files. Mr. Thomson was

not given any list of the contents of the files or of the documents which had been removed. Moreover, the transit slip forms on each of the files from "D" Operations did not indicate which documents had been extracted before being sent to "F" Operations. In view of the fact that there was scant material left on the files, he made an assessment that there was nothing of value left to retain and endorsed Mr. Pethick's recommendation for destruction. He destroyed the files himself on June 10, 1977.

20. Mr. Thomson says that when Mr. Gavin designated him to carry out the final stages of the review process, Mr. Gavin merely indicated that Mr. Begalki was phasing out a special unit and no longer considered the S.O.G. files to be of any further operational value. Mr. Gavin did not suggest to him that he use any specific criteria; the matter being left entirely to his discretion and judgment. Nor did Mr. Pethick discuss with Mr. Thomson the destruction criteria which Mr. Pethick had employed. Since Mr. Thomson felt that the 938 category which had been assigned to the S.O.G. files was not really applicable, he relied in his review on three very general criteria: (1) operational value, (2) record value (i.e. for the records branch) and (3) historical significance. Mr. Thomson stated that there was no discussion about a possible forthcoming Commission at that time. Nor was he concerned with whether the files fell within the 1975 mandate because the mandate was not relevant to the process of file review. Mr. Thomson says that he saw nothing unusual in this destruction procedure.

21. Mr. Thomson says that he knew nothing of any prior review of these files in 1974 or 1975. He told us that he had never heard of any instance where two complete reviews of files had taken place. In such a case, he believed that it would be necessary to make some official notation to that effect or at least to prepare summaries of the contents of the destroyed files.

Conclusions and recommendations

22. In our opinion the explanation given by Mr. Yaworski for recommending in 1974 the destruction of the Checkmate files, when analyzed, amounts to nothing less than an intention to reduce the possibility of the Government of Canada learning of acts which he himself had come to consider to have been "wrong". Standard criteria for the destruction of files were deliberately disregarded by him and by Mr. Draper. We cannot ignore the fact that more than three years earlier, on June 30, 1971, in a memorandum prepared by Mr. Yaworski (although signed by Sergeant Pethick), it was said that "containment measures being considered or attempted" might be "of such a sensitive nature that they are not to be committed to paper". Mr. Yaworski told us that by "sensitive" he did not mean "illegal" but rather the fact that the Security Service was using information from a source which might put the source in jeopardy, and to the fact that the Security Service was itself taking action rather than simply reporting its information to some other branch of government. We find this explanation unconvincing and we believe that Mr. Yaworski, drafting the memorandum for Sergeant Pethick's signature, was referring to a willingness to use deterrent methods, including illegal ones if necessary, to achieve what he described in the memorandum as a "more aggressive and

positive approach" to operations which would "impede, deter or undermine" target groups.

23. The essential facts relating to the destruction of the files were adequately established by the witnesses whom we called and we therefore did not consider it necessary to call Mr. Draper to testify on this subject. In earlier testimony with respect to the operations themselves, he co-operated with us in the process of reviving the history as best he could (of which we are satisfied).

24. For the reasons given, we consider that the conduct of Mr. Yaworski and Mr. Draper was unacceptable.

25. Turning to the review that was carried out in 1977, we were initially very concerned that the reasons for that review may also have been questionable, but after our intensive hearings on the subject we are not prepared to find that there was any improper motive for what was done in that year.

CHAPTER 4

REPORTING OPERATION BRICOLE AND CERTAIN OTHER ACTIVITIES "NOT AUTHORIZED OR PROVIDED FOR BY LAW" TO MINISTERS AND SENIOR OFFICIALS

Introduction

1. In Part VI, Chapter 9, we shall report in detail on "Operation Bricole" ("Bricole", in English, means "Handyman"), which resulted, on the night of October 6-7, 1972, in the entry of members of the Security Service of the R.C.M.P. and two other police forces into premises occupied by the Agence de Presse Libre du Québec (A.P.L.Q.) and two other organizations in Montreal, and the removal by them from those premises of many of the records of the organizations, the examination of those records, and the ultimate destruction of the records. As we explained in the General Introduction to this Report, it is this conduct which, when revealed publicly by a former member of the R.C.M.P. at a trial arising from another matter in March 1976, ultimately produced circumstances which in July 1977 led to our appointment to conduct this Inquiry.

2. In this chapter and the next, which cover a period of five years, we shall examine whether the fact of Operation Bricole was disclosed to the Solicitor General and the extent to which, after its public disclosure in March 1976, there was full and frank disclosure by the R.C.M.P. to the Solicitor General, and to the Government of Canada generally, of illegal practices that were carried on in the R.C.M.P. Although the theme of deceit comes to the surface in other chapters of this Report, and particularly those in this Part and in certain chapters of Part III, it is in this chapter in particular that we find illustrations of what we described in Part III, Chapter 1, of our Second Report, in the passage which we quoted in the Introduction to this Part. The issue in this chapter is whether, at the several stages of the chronology, deceit was practiced toward the government. We shall see that the "need to know" principle makes it sometimes difficult to assign blame to a particular member, and that considerable ingenuity was exercised to avoid recognizing that the A.P.L.Q. incident was not "isolated" as an illegal act. In the following chapter we shall examine whether, when it appeared that former members of the Force might reveal illegal activities to the Solicitor General, efforts were made to try to prevent that from occurring at the very moment when the Solicitor General

was planning to assure the House of Commons that the A.P.L.Q. incident was "isolated" and that the practices of the Force conformed to the law.

3. This chapter encompasses a great deal of evidence taken throughout our Inquiry. The evidence of a large number of the witnesses who appeared before us was relevant in some respects to the matters dealt with. Those whose testimony touched most directly on the issues in question were the Honourable Jean-Pierre Goyer, the Honourable Warren Allmand, the Honourable Francis Fox, the Honourable Bud Cullen, Mr. Jérôme Choquette, Mr. Roger Tassé, Commissioner W.L. Higgitt, Commissioner M.J. Nadon, Commissioner R.H. Simmonds, Mr. J. Starnes, Mr. M.R.J. Dare, Assistant Commissioner M.S. Sexsmith, Chief Supt. Henri Robichaud, Mrs. Rita Baker, former S/Sgt. D. McCleery, former S/Sgt. Gilles Brunet, former S/Sgt. Gilbert Albert and Mr. J.R. Cameron. Their relevant public testimony is found in Volumes 19, 64, 81, 84, 87, 88, 90, 91, 114-117, 122, 123, 125-129, 136, 137, 139, 154-156, 160, 161, 168, 169, 189-191. The *in camera* testimony is found in Volumes C50, C58, C81-83, C87 and C89. In addition we received representations in response to notices given pursuant to section 13 of the Inquiries Act (Vol. C122).

A. REPORTING 'OPERATION BRICOLE' TO MINISTERS PRIOR TO PUBLIC DISCLOSURE BY ROBERT SAMSON IN MARCH 1976

Summary of facts

4. Operation Bricole took place early on the morning of October 7, 1972. The Director General of the Security Service, Mr. Starnes, was absent from Ottawa, and was only advised by telex about the operation on his return from Montreal on October 10. Commissioner Higgitt, who was absent from Ottawa for approximately one week following October 8 or 9, testified that he does not recall being made aware of the operation before his departure and was told about it on his return by Mr. Starnes.

5. During Commissioner Higgitt's absence, the Acting Commissioner was Deputy Commissioner Nadon. On October 11, Mr. Nadon received a letter from Mr. J.R. Cameron, the Departmental Assistant of the Solicitor General, Mr. Goyer, enclosing copies of a letter dated October 9, 1972, addressed to the Solicitor General from the Agence de Presse Libre du Québec (A.P.L.Q.), the Mouvement pour la Défense des Prisonniers Politiques Québécois (M.D.P.P.Q.) and the Coopérative des déménagements du 1^{er} mai (1^{er} mai). These organizations described a theft of documents from their offices on the night of October 6 and 7, and advised Mr. Goyer that a telegram (a copy of which was attached to the letter) had been sent to the R.C.M.P., the Quebec Police Force (Q.P.F.), and the Montreal City Police (M.C.P.). In the letter they said:

At this time, everything points to this being an act carried out by police forces; . . .

[our translation]

In referring to the telegram to the three police forces they said:

In this telegram we asked them whether their respective organization was responsible for this act.

[our translation]

They concluded the letter as follows:

In your capacity as Solicitor General, we ask you to intervene as quickly as possible so that our question will receive a clear and accurate reply. We await a reply between now and October 13 at 11 o'clock.

[our translation]

6. Mr. Nadon told us that he has no recollection of receiving the letter from Mr. Cameron. By reconstruction from the documents, he assumes that he referred Mr. Cameron's letter and the enclosures to the Director of Criminal Investigations on October 11. He noted on the letter on October 11 "check this out with Sec. Serv. and 'C' Division and see if we can come up with some answer". He told us that he infers that the Director of Criminal Investigations must have called him back and told him that there was nothing on the criminal operations side of the house and that it was probably then that he wrote on the letter "Best answer may be we are unaware". Mr. Nadon says that he heard nothing further about the operation until 1976.

7. Assistant Commissioner Parent, the Deputy Director General of the Security Service, responded to Mr. Cameron's letter of October 11, 1972, by a letter dated October 26, 1972, addressed to Mr. Cameron. This letter was signed on Mr. Parent's behalf by Sub-Inspector Yelle, who was the assistant head of "G" Branch at R.C.M.P. Headquarters. Mr. Parent's letter acknowledged receipt of Mr. Cameron's letter and said "We recommend that no acknowledgment of the A.P.L.Q.-M.D.P.P.Q. letter be made". Mr. Starnes was in Europe from October 17 or 18 to October 29 or 30 and told us that he did not participate in the decision to recommend that no acknowledgment be made of the letter. He said that before his departure for Europe no thought had been given as to what kind of answer should be sent. Commissioner Higgitt testified that he does not recall whether he was made aware of the advice given in the letter.

8. On October 12, 1972, the Attorney General of Quebec, the Honourable Jérôme Choquette, sent a telegram to the A.P.L.Q. advising that the R.C.M.P., the Q.P.F. and the M.C.P. were not involved in the matter and that the M.C.P. was conducting an investigation. He sent that telegram without consulting either the R.C.M.P. or the Solicitor General of Canada. Mr. Goyer testified that, upon reading about it in the newspapers, he did not find Mr. Choquette's assurance on behalf of the R.C.M.P. strange, first, because there were joint police operations, and second because there were channels of communication among the three police forces, and, since Mr. Choquette was Attorney General of the province, it was normal that he should be the spokesman.

9. Mr. Goyer was absent from Ottawa when the letter from the A.P.L.Q., M.D.P.P.Q. and 1^{er} mai arrived. He testified that when he was told about the letter by his office staff he was advised that it had been sent on to the R.C.M.P. He said that he was told, on October 26 or shortly thereafter, that a

letter had been received from Mr. Parent recommending that there be no reply to the A.P.L.Q. letter. Mr. Goyer explained that he knew that the A.P.L.Q. was a target of the Security Service, suspected of subversive activities; consequently they did not attract his sympathy, and on the contrary, he did not wish to have any dealings with them. He told us he was not surprised when the R.C.M.P. recommended that he not reply and thought that the recommendation was perfect ("c'est parfait"). It should be borne in mind that we have come across no evidence that by October 1972 there had been any event that should have caused Mr. Goyer to be concerned as to whether the R.C.M.P. would lack candour in their dealings with him.

10. According to Commissioner Higgitt's notes, Mr. Goyer met with Mr. Higgitt and Mr. Starnes on November 3 and November 6, 1972. Mr. Tassé, the Deputy Solicitor General, was also present at both meetings. Prior to those meetings both Mr. Starnes and Commissioner Higgitt were aware that the R.C.M.P. Security Service had participated in the break-in and removal of documents from the A.P.L.Q., M.D.P.P.Q., 1^{er} mai premises. Commissioner Higgitt and Mr. Starnes were both also aware, at that time, of the reply given by Mr. Choquette to the A.P.L.Q., M.D.P.P.Q. and 1^{er} mai. Mr. Goyer testified that at that meeting he had before him the letter from Mr. Parent to Mr. Cameron and it was discussed briefly. He said that either Commissioner Higgitt or Mr. Starnes told him that the M.C.P. was investigating the matter, and if there was anything to it it was up to the Attorney General to carry out his duty and that is why the R.C.M.P. considered that no reply should be made. Mr. Goyer also testified that he was not told by the R.C.M.P. that they had been involved in the operation, that Mr. Parent's advice not to reply to the A.P.L.Q. meant to him that the facts in the A.P.L.Q. letter were completely false, that he did not ask whether there had been a theft, and, that he first became aware of the R.C.M.P. involvement in Operation Bricole from the newspapers in about March 1976.

11. Mr. Tassé testified that he recalls a meeting with Mr. Goyer, Commissioner Higgitt and Mr. Starnes in the few days following the election at the end of October 1972 but that he does not recall any discussion about the recommendation of Mr. Parent that there be no acknowledgment of the A.P.L.Q., M.D.P.P.Q., 1^{er} mai letter. He said that on March 16, 1976, he was advised by Mr. Dare about the details of Operation Bricole and R.C.M.P. participation in it, and if what he learnt then had been said in his presence in 1972 he would certainly have remembered.

12. Commissioner Higgitt told us that he does not recall any definite time when he had a specific conversation with Mr. Goyer about Operation Bricole. Nevertheless, he stated that it is "inconceivable" to him that he would not have had such a discussion and that the weight of logic tells him that he discussed Operation Bricole with Mr. Goyer. Yet Mr. Higgitt's notes from his meetings with Mr. Goyer on November 3 and November 6 do not mention the Operation. He also told us that if Mr. Goyer had asked him about the operation he would not have lied.

13. Mr. Starnes' evidence was:

... I have no recollection, in fact, of talking to the Minister about this subject. I must have. You know, logic leads me to believe that I did, ...

In response to a hypothetical question as to what his reply would have been if Mr. Goyer had asked him whether the R.C.M.P. were involved in the operation, Mr. Starnes testified that he would have said yes. Mr. Dare testified that in a conversation with Mr. Starnes, on or about March 31, 1976, Mr. Starnes told him that he, Mr. Starnes, had *not* informed Mr. Goyer about Operation Bricole because it would have placed Mr. Goyer in an untenable position. Mr. Dare gave this information to Mr. Allmand, who had succeeded Mr. Goyer as Solicitor General, by letter dated April 1, 1976. Mr. Starnes told us that Mr. Dare's recollection of that conversation is accurate but that he thinks that he, Starnes, had confused in his own mind at that time the decision the R.C.M.P. had taken about not reporting Operation Ham to the Minister with what they had reported to the Minister on Operation Bricole.

14. Over a year later, on May 27, 1977, a meeting was held, attended by Mr. Fox (who had succeeded Mr. Allmand), Mr. Claude Morin (Mr. Fox's Executive Assistant), Mr. Goyer, Commissioner Higgitt, Mr. Starnes, Mr. Tassé, Commissioner Nadon and Deputy Commissioner Simmonds. At that meeting, according to notes of the meeting prepared by Mr. Tassé, Mr. Starnes left the impression, through nodding his head, that Mr. Goyer had been advised in 1972 about R.C.M.P. participation in Operation Bricole. Mr. Tassé testified that after the meeting he asked Mr. Dare who had told him that Mr. Starnes did not place the full facts before Mr. Goyer in 1972, and that Mr. Dare told him that it was Mr. Starnes himself. Mr. Tassé told us that he then asked Mr. Dare to speak to Mr. Starnes again, to find out whether the information provided to Mr. Allmand was in accordance with the conversation that Mr. Dare and Mr. Starnes had in 1976. Mr. Tassé stated that Mr. Dare reported back to him that he had spoken to Mr. Starnes again and that Mr. Starnes agreed that what was said in the letter to Mr. Allmand accurately represented what he, Mr. Starnes, had said in the 1976 conversation, but that in 1977 he had a different memory about the matter and that he believed it possible that he, Starnes, had mentioned to Mr. Goyer the participation of the R.C.M.P. in Operation Bricole.

15. Mr. Allmand succeeded Mr. Goyer as Solicitor General on November 27, 1972. He testified that he did not learn about Operation Bricole in any way until it was revealed by former Constable Robert Samson at the latter's trial in March 1976.

16. Mr. Dare succeeded Mr. Starnes as Director General on May 1, 1973. Mr. Nadon succeeded Mr. Higgitt as Commissioner on January 1, 1974. On August 19, 1974, the Security Service prepared a "Damage Report" with respect to Constable Samson, who had been arrested in connection with a bombing in Montreal. The Damage Report was a summary and analysis of the extent to which Constable Samson was aware of various activities and operations of the Security Service.

17. Mr. Dare became aware of Operation Bricole in August 1974 when that Damage Report was submitted to him by the Deputy Director General (Operations), Assistant Commissioner Howard Draper. Mr. Dare submitted the Damage Report to Commissioner Nadon, accompanied by a memorandum dated August 20, 1974. The Damage Report simply stated, in referring to Operation Bricole, that it "was a PUMA operation at the A.P.L.Q., that took place without the knowledge or permission of Headquarters". It did not provide any details about the break-in and removal of documents. It further stated: "All original documents were destroyed...". Mr. Dare's memorandum to Commissioner Nadon elaborated slightly on the operation:

The "G" Ops. PUMA operation is a delicate one since this Headquarters had no knowledge or authorization which involved our co-operation with the MCP. In this case Cst. Samson was deeply involved. It is reported that all documents were destroyed. There remains, however, the fact that our member was deeply involved with the MCP and should he choose to cause an exposé it would seem that the Force would be open to charges of poor supervision in the delicate security field. Some negotiation and review with the MCP should be undertaken to determine what scenarios, if any, should be planned.

18. Commissioner Nadon testified that although he recalls being briefed on the Damage Report, he does not recall discussing any of the details of Operation Bricole in 1974 and that he did not read the Damage Report at that time, although he may have skimmed through Mr. Dare's memorandum. He said that if he had known the details of the operation in 1974 he would have ordered an investigation. He said that he did not relate this item in Mr. Dare's memorandum to the incident mentioned in the 1972 letter from the A.P.L.Q., which he had handled at the time as Acting Commissioner.

19. Mr. Dare testified that he came to the conclusion in 1974 that Operation Bricole had been legal and that he came to that conclusion without seeking any legal advice. From his memorandum to Commissioner Nadon it is clear that he was aware of the difficult position the Force would be in if the operation were exposed, because "charges of poor supervision" might be levelled against the Force. When he became aware of Operation Bricole, he did not inform the Solicitor General, Mr. Allmand, about it because he was satisfied that Mr. Starnes had dealt with the matter "in his own way, period", not because he then considered it was not illegal. He "didn't think it was [his] responsibility to review a clear decision that had been made by [his] predecessor", although he did not agree with Mr. Starnes' "decision not to advise the Solicitor General of that matter".

Conclusions

20. On the evidence before us, we conclude that before March 16, 1976, no member of the R.C.M.P. reported to anyone in the government, either at the ministerial or at the official level, about the R.C.M.P. participation in Operation Bricole and the subsequent examination and destruction of the documents which had been removed during the operation. Mr. Goyer and Mr. Tassé say that they do not recall being advised about R.C.M.P. participation in the

operation when the recommendation of the R.C.M.P. not to reply to the letter from the A.P.L.Q., M.D.P.P.Q., and 1^{er} mai was being discussed with Commissioner Higgitt and Mr. Starnes on either November 3 or November 6, 1972. They would surely recollect such a significant matter if they had been given such information. Neither Mr. Higgitt nor Mr. Starnes remembers specifically having advised Mr. Goyer about R.C.M.P. participation. They simply rely on their "logic" which leads them to the conclusion that they must have told Mr. Goyer. To refute that "logic" there is not only the recollection of Mr. Goyer and Mr. Tassé, but there is also Mr. Starnes' statement to Mr. Dare in March 1976 that he had not informed Mr. Goyer about R.C.M.P. participation, and there are Commissioner Higgitt's notes of the November 3 and November 6, 1972 meetings, which make no mention of the operation.

21. Mr. Goyer testified that the advice not to reply to the A.P.L.Q., M.D.P.P.Q., and 1^{er} mai letter, constituted for him a representation by the R.C.M.P. that the facts in the A.P.L.Q. letter were false. He admits that he was not sympathetic to the A.P.L.Q. and says he thought that the recommendation not to reply to the letter was perfect ("C'est parfait"). Clearly, with such a frame of mind he would have had no inclination to enquire further of the R.C.M.P. about the matter. We note that Mr. Goyer adopted this attitude in spite of the seriousness of the allegation and the fact that the advice given to him did not mention whether or not the R.C.M.P. were involved. Mr. Starnes desired not to place the Minister in what he called an "untenable position". His ability to accomplish that was, in effect, (if unintentionally) made possible by the attitude of Mr. Goyer, who apparently had no desire to pursue the matter.

22. Nevertheless, we find the conduct of some of the members of the R.C.M.P. totally unacceptable. In 1972 Mr. Starnes and Commissioner Higgitt withheld relevant information from Mr. Goyer. It was incumbent upon them to provide him with all the facts relating to Operation Bricole as soon as they became aware of them. That would have been so even without the letter from the A.P.L.Q., M.D.P.P.Q., and 1^{er} mai. But once the matter was raised in that letter, they compounded their wrong by allowing the Minister to be deceived into believing that there was no involvement of the R.C.M.P. They chose to cover up an illegal operation. This was misguided and wrong.

23. We do not agree with Mr. Dare's interpretation of his responsibilities in this matter, and we feel that his conduct was improper in the circumstances. He was clearly aware of the seriousness of the matter, as evidenced by the August 19, 1974, Damage Report and his accompanying memorandum to Mr. Nadon. It is not acceptable for any senior government employee to refrain from raising a matter with a responsible Minister merely because his predecessor chose to handle it in a certain fashion. To accept Mr. Dare's reasoning would be tantamount to saying that no wrongdoing which is discovered by an incumbent should be revealed by him because his predecessor chose to cover it up. At the very least, Mr. Dare should have urged upon Commissioner Nadon that the matter be brought to the attention of Mr. Allmand immediately. We believe that in the light of the reporting relationships that then existed it would have been appropriate for Mr. Dare to raise the matter directly with Mr. Allmand after first advising Commissioner Nadon of his intention to do so.

24. We accept Mr. Nadon's evidence that his note on the Cameron letter — "Best answer may be we are unaware" — may have been made by him after consultation with the Criminal Operations side of the Force and prior to the letter being referred to the Security Service. The note, however, does not make that clear. Nevertheless, such a note from Mr. Nadon, who was then the Acting Commissioner, may well have governed the decisions of those subsequently involved in making the recommendation to the Minister. Unfortunately, Mr. Parent's health prevented him from testifying before us, so we do not know to what extent he was knowledgeable about the recommendation in the memorandum which went out over his name to Mr. Cameron.

25. We also accept Commissioner Nadon's testimony that when Operation Bricole came up in the Samson Damage Report he did not relate it to the letter from the A.P.L.Q., M.D.P.P.Q., and 1^{er} mai letter in 1972. We find this position to be consistent with his total lack of knowledge and experience with regard to the Security Service prior to his appointment as Commissioner on January 1, 1974. He pointed out that the Samson Damage Report does not refer to any illegalities or irregularities with respect to Operation Bricole. It is therefore difficult to see how he would have been alerted to the necessity of bringing the matter to the attention of the Minister, in the absence of some further briefing to that effect by Mr. Dare. Indeed, he said that he has no recollection of ever having seen the Damage Report, itself, and we have no reason to question that. He said that, had he known the details of the operation in 1974 or even had he seen the Damage Report, he would have called for an investigation.

B. REPORTING OPERATION BRICOLE AFTER PUBLIC DISCLOSURE

(i) *The history from March 1976 to May 1977*

26. According to an R.C.M.P. internal memorandum, on August 15, 1974, during the course of the police investigation into a bombing in which he was involved, Constable Samson "hinted" to two members of the R.C.M.P. "that if his mother and his friends did not obtain better treatment from the Montreal City Police Investigators, he would hold the Force responsible and would bring the Force and all those in it tumbling down". As a consequence, the Damage Report of August 19, 1974, was prepared. In March 1976, during a *voir dire* at his trial arising out of the bombing incident, former Constable Samson mentioned Operation Bricole, and senior officers of the R.C.M.P. then realized that sooner or later the matter would become public knowledge. A comprehensive report was prepared, dated March 15, 1976, and submitted to Mr. Dare. On March 16, 1976, Mr. Dare met with Messrs. Tassé and Bourne and gave them a copy of that report. Mr. Tassé immediately phoned the Deputy Attorney General of Quebec to ask him if he was aware of the matter, and the latter confirmed that he was. On the same day Mr. Tassé advised the Assistant Deputy Attorney General of Canada of his conversation with the Deputy Attorney General of Quebec. Immediately following that meeting, R.C.M.P.

representatives met with Mr. Allmand and informed him about Operation Bricole.

27. Mr. Tassé testified that on March 17 he told Mr. P.M. Pitfield, the Clerk of the Privy Council, about Operation Bricole. On the afternoon of the same day he and Mr. Pitfield met with Prime Minister Trudeau to inform him. Mr. Tassé told us that he attended three subsequent meetings with the Prime Minister during March and April 1976, at which Messrs. Allmand, Nadon, and Dare were present and at one of which the Honourable Ron Basford (the Minister of Justice), Mr. D.S. Thorson (the Deputy Minister of Justice) and Mr. Pitfield were present. On April 7, 1976, a copy of the R.C.M.P. report on Operation Bricole was delivered to Mr. Allmand under cover of a memorandum from Mr. Dare. Mr. Tassé testified that in the weeks following March 16, assurances were given on at least two occasions by Commissioner Nadon and Mr. Dare, in the presence of the Prime Minister and Mr. Allmand, that Operation Bricole was an activity which was exceptional and isolated. Mr. Tassé explained that he understood from those assurances that the activities of the R.C.M.P. were conducted within the constraints imposed by the law, that Operation Bricole was a kind of an aberration which must be treated as such, and that as far as all of the other activities were concerned everything was under control. He told us that he understood that Messrs. Nadon and Dare were in a position to assure the government that the R.C.M.P. operated legally and that there were not any situations where illegal operations were institutionalized. He said he understood that that did not mean to say that there would not be cases where policemen, through overzealousness, lack of judgment or dishonesty, might carry out criminal or illegal acts. According to Mr. Tassé, Messrs. Dare and Nadon entered one reservation, which was that before the Protection of Privacy Act came into effect in 1974 there were intrusions made for the purpose of carrying out electronic eavesdropping. Mr. Tassé added that those to whom this reservation was expressed were already aware of such intrusions.

28. On April 23, 1976, Commissioner Nadon wrote to Mr. Allmand, enclosing a 'Proposed Statement for Use by the Minister'. In the letter he said:

On the advice of the present Director General of the Security Service, I am prepared to assure you, without equivocation, that there is no precedent for a search and seizure operation by the Security Service in Montreal, acting alone or in concert with other Police Forces, and there has been no repetition.

He concluded the letter by saying:

My assurance that there has been no previous case of its kind and that such action has not been repeated by the Security Service in Montreal, will, I trust, assist you in disposing of this isolated incident to the satisfaction of the Government and the House.

In the draft proposed statement the following sentence is found:

This is the only incident wherein the R.C.M.P. Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation, alone or in concert with members of other police agencies.

Commissioner Nadon testified that, as far as he was concerned, the assurances given by him in the letter applied to all of Canada, not just to Montreal, and also that it applied to the criminal investigation side of the Force as well as to the Security Service. Mr. Dare told us that he participated in the drafting of that letter and that he agrees with it. Mr. Dare said that he supposes he has to make an exception with respect to paragraph 5 which reads "... the operation was clearly contrary to the rule of law, the very basis on which this Force is founded", because he did not consider Operation Bricole to be illegal. Commissioner Nadon said that the letter of April 23, 1976, to Mr. Allmand, had been prepared by Mr. Dare and that he read it over with Mr. Dare before signing it.

29. Mr. Tassé testified that, because of the assurances given in 1976 that Operation Bricole was an activity that was exceptional and isolated, it was decided in that year not to create a commission of inquiry. Mr. Allmand told us that at that time consideration was given to setting up a commission to investigate, but that after discussions with the Government of Quebec it was agreed to permit the Government of Quebec to investigate the matter as an alleged offence.

30. On May 18, 1976, in response to a question, Mr. Allmand advised the House of Commons that he had met with the Solicitor General of Quebec who had "... asked if he could not deal directly with the R.C.M.P. to determine whether something illegal had taken place and whether further action should be taken". Mr. Allmand said that he had "... asked the R.C.M.P. to cooperate fully with the Law Enforcement Officers and the Minister in Quebec", and that the Solicitor General of Quebec would "... be taking action following the completion of his investigation".

31. On August 16, 1976, Commissioner Nadon sent a memorandum to Mr. Dare, advising that he had reviewed the "Bricole" file and noted that the investigation in the case was far from complete. By memorandum dated August 25, 1976, Mr. Dare replied to Commissioner Nadon, advising that they had "... agreed to let the Quebec authorities pursue their investigation into a matter which is within its prime jurisdiction, the Criminal Code". In the memorandum Mr. Dare said that in his judgment this would leave Commissioner Nadon completely free to take whatever action he deemed appropriate after the Province of Quebec had made known its decisions. He added that "... to cover much the same ground by way of an internal investigation could be misinterpreted by those same Quebec authorities, perhaps especially the matter of interviewing of necessity members of other police forces". Commissioner Nadon was satisfied with Mr. Dare's reasoning and did not pursue the matter further.

32. On September 14, 1976, Mr. Fox was named Solicitor General. He testified that he had heard about the A.P.L.Q. incident in the House of Commons before he became Solicitor General and that after he became Solicitor General it was mentioned to him briefly, he thought in September 1976, at which time it was in the hands of the Attorney General of Quebec. In December 1976 Messrs. Nadon, Dare and Tassé attended a meeting with Mr. Fox at which Mr. Fox was completely briefed about Operation Bricole. Mr.

Tassé told us that at that briefing the assurances about R.C.M.P. activities given previously to Mr. Allmand were repeated to Mr. Fox. Mr. Fox testified that in December 1976 it was reported to him that there would be a *pré-enquête* in Montreal which would begin in January 1977. He said that at the beginning of January 1977 the Judge conducting the *pré-enquête* had requested the R.C.M.P. to produce certain documents. Mr. Fox examined the documents from the R.C.M.P. files which it was proposed to submit to the Judge. He told us that, before he looked at those documents, Mr. Tassé had given him documents to examine from the departmental file on Operation Bricole, and that he had been astonished by what he read.

33. On January 25, 1977, at a regular weekly meeting that Mr. Fox held with the R.C.M.P. the Operation Bricole question was discussed. Mr. Fox told us that at that meeting he indicated his astonishment at reading the documents and asked whether it was the usual practice to do things like that. According to Mr. Fox, he was told clearly that it was the only case to their knowledge of illegal activities, that it was an isolated case, that the matter had been examined a year earlier by Mr. Allmand and that Mr. Allmand had also been assured that it was an isolated case.

34. Mr. Fox told us that at the meeting of January 25, 1977, he expressed to Commissioner Nadon his disquiet at Mr. Starnes' reaction upon being made aware of the operation on October 10, 1972, i.e. Mr. Starnes believed that he, Starnes, should have been advised in advance of the operation but did not express concern about the operation itself as a matter of principle. According to Mr. Fox, he also expressed his disquiet at the general reaction of the R.C.M.P. in recommending to Mr. Goyer that he not reply to the letter from the three organizations, and at the fact that one month later, when a new Minister, Mr. Allmand, had entered the picture, the affair had not been brought to his attention.

35. Mr. Fox told us that while the January 25 meeting dealt specifically with Operation Bricole, general assurances were given that the only case of illegal activity to the knowledge of the R.C.M.P. members present was Operation Bricole. He testified that the assurances he received went far beyond those given in Commissioner Nadon's letter of April 23, 1976, to Mr. Allmand (see excerpts quoted earlier). According to Mr. Fox, his own question was more general, the assurances that he received were much more general, and those general assurances were that the only case of illegal activity was Operation Bricole.

36. Commissioner Nadon testified that at the January 25 meeting Mr. Fox asked him whether he had knowledge of illegalities, other than the A.P.L.Q. incident, and he assured Mr. Fox that from his, Nadon's, experience and knowledge he did not know of any others. He told us that in testifying before us he was just guessing as to what took place at the meeting when this matter was discussed. He said that Mr. Fox possibly asked him whether there were any similar circumstances and he probably looked around the table to see if any of the Deputies had anything to say and when they did not say anything, he assured Mr. Fox there were no others. Commissioner Nadon testified that Mr.

Fox probably asked him "Are there any other incidents like this or similar to this?" and that he assured Mr. Fox there were not. He explained that he did not necessarily mean another break-in of a news agency, but rather, "Any illegality — something that would be illegal. Search and seizure without warrant, et cetera, or whatever it was". He interpreted Mr. Fox's question as referring to any other matter that was illegal that might have been done by a member of the Force and he regarded the assurance he gave as a categorical assurance that nothing illegal, other than the A.P.L.Q. incident, had been done by any member of the Force. He said he was satisfied that that was so because the Deputy Commissioners at the meeting would have spoken up if they had thought that he was leading the Minister astray, or would at least have brought it to his, Nadon's, attention. He said he was confident that the Deputy Commissioners would have brought to his attention any knowledge they had of any other cases of illegality. He told us that the main concerns at the January 25 meeting were the A.P.L.Q. incident and the practices employed during that operation, and that Mr. Fox wanted some assurances that the R.C.M.P. had policies and instructions in place that prohibited members of the Force from carrying out any illegal act during such operations.

37. Following the meeting of January 25, 1977, Mr. Fox asked Mr. Tassé to prepare a letter for his signature, asking the R.C.M.P. for written assurances confirming what they had told him verbally. In that letter Mr. Fox pointed out that at the meeting Commissioner Nadon had assured him that the activities of the Security Service were carried out within the law and that members of the Security Service had received precise directions on the subject from the Director General in May 1975. He asked Commissioner Nadon to confirm that that was the case not only for the Security Service but for the R.C.M.P. as a whole in all its operations.

38. Mr. Fox testified that at the time he read the Operation Bricole documents he decided that he would raise the question again with the Prime Minister. He said that at the January 25 meeting he told Mr. Nadon of his intention to see the Prime Minister and that he no doubt asked Mr. Nadon to give him his recommendations. Mr. Fox stated that he thinks that is why Commissioner Nadon wrote to him so quickly after the meeting with proposals as to alternatives which could be followed. By letter dated January 27, received in Mr. Tassé's office January 31, 1977, Commissioner Nadon wrote to Mr. Fox outlining a number of options open to the Minister "to meet the demands for the release of Security Service information into the public domain".

39. Mr. Fox met with the Prime Minister on January 29, at which time, according to Mr. Fox, they discussed the possibility of creating a commission of inquiry to deal with Operation Bricole. Mr. Fox told us that they decided it would be preferable to await the unfolding of events before the courts in Montreal and then to consider the question in detail.

40. Mr. Fox testified that his chief concern was to satisfy himself that Operation Bricole was unique and not part of a system, that it was not something which was accepted by and acceptable to the R.C.M.P. and its senior management. He said that the other thing which preoccupied him,

which he had always taken for granted in relation to police forces, was that it was incumbent on the Commissioner or the Director General to bring to the attention of the Minister, in a clear and unequivocal fashion, all activity which might be illegal. He said he found it very surprising that Mr. Allmand had not been informed of Operation Bricole although Mr. Allmand had become Solicitor General only a few weeks after Headquarters had learned of the operation.

41. As a result of the *pré-enquête*, three police officers, one from each of the R.C.M.P., the Quebec Police Force and the Montreal Police, had been charged. When the trial of the three police officers took place in Montreal there was more publicity in the news media and there were questions in the House of Commons. For a considerable period of time the government had undertaken, through Mr. Allmand, to make as complete a statement as possible in the House of Commons on the matter. No such statement had been made by the time Mr. Allmand was transferred to another Ministry. Mr. Fox had promised to make a statement in the House of Commons as soon as judicial proceedings against the three policemen were finished. Guilty pleas were entered on May 26, and the court set June 9 as the date for representations on sentencing. In order to prepare the statement for Mr. Fox, a meeting took place on May 27, 1977, at which Messrs. Fox, Goyer, Tassé, Higgitt, Nadon, Simmonds, Starnes, Dare and Morin were present. This is the meeting we discussed earlier.

42. Mr. Tassé testified that the purpose of the meeting was to try to determine what was known about Operation Bricole and to organize the material in such a way that Mr. Fox could refer to it easily during an appearance which he had to make before the Parliamentary Committee considering his estimates. Mr. Tassé said the meeting was also the first step towards the preparation of the statement which Mr. Fox had to make in the House. Mr. Fox told us that the object of the meeting was to assist him to prepare the statement for the House and to relate all the facts concerning Operation Bricole, and particularly at what time the R.C.M.P. in Ottawa had become aware of the operation and when the R.C.M.P. had or had not told the Minister of the day about it. Commissioner Simmonds testified that the purpose of the meeting was to determine how much the Minister had been advised and not whether or not the incumbent Minister was going to issue a press release. According to Commissioner Simmonds, the real gist of the meeting was that this group of people got together to reconstruct events and to try to determine who had told what to whom. He said that he was (as Deputy Commissioner, which was then his rank) simply an observer because he did not know any of the circumstances at the time. Mr. Higgitt testified that his recollection is that something preliminary was being done at the meeting to prepare Mr. Fox to deliver a statement in the House of Commons.

43. Mr. Fox asked Mr. Tassé to take notes at the May 27 meeting and to prepare a draft statement following it. Mr. Tassé and Mr. Bourne prepared a draft dated May 31, 1977. Mr. Tassé sent the draft statement to Commissioner Nadon on the same day with a note saying that he hoped to have the Commissioner's and Mr. Dare's comments the following morning. Mr. Tassé

told us that he does not recall receiving a written reply from anyone but that he believes that he had conversations with Commissioner Nadon, though not with Mr. Dare, in which there were several minor suggestions, the nature of which he does not remember. He said that there were no major comments.

44. On June 9, the sentencing of the three policemen was deferred until June 16. Between the entry of the guilty pleas on May 26 and the sentencing on June 16, 1977, Chief Superintendent Cobb, the Security Service Area Commander in Quebec, who was the R.C.M.P. member who had been charged, was suspended. During that period Superintendent Henri Robichaud was the Acting Area Commander.

(ii) *Allegations of Messrs. McCleery and Brunet*

45. Sometime in May 1977 Messrs. Donald McCleery and Gilles Brunet asked Mr. Fox's office for an appointment with Mr. Fox so that they could review with him the circumstances of their dismissal from the Force in 1973. Mr. Fox decided that Mr. Tassé, rather than he, should meet with them. Mr. Robichaud testified that he had obtained information that "the Minister had invited Mr. McCleery to Ottawa to meet with him" and that on May 31, 1977, he discussed that information by telephone with Assistant Commissioner Sexsmith, the Deputy Director General (Operations). Mr. Robichaud told us that his interest in the matter was that there was a considerable amount of publicity at the time and he was wondering what other publicity would follow from the meeting. Mr. Robichaud testified that after talking to Mr. Sexsmith on the telephone, he spoke to Staff Sergeant Gilbert Albert, a member of the Security Service in Montreal, and asked Mr. Albert whether he, Albert, could meet with Mr. McCleery to see "what Mr. McCleery was up to those days".

46. Mr. Albert met Mr. McCleery at lunch on May 31, 1977. Afterward Mr. Albert went to Mr. Robichaud's office and gave him a verbal report. Mr. Robichaud then arranged a meeting with Mr. Sexsmith for that same evening, in Ottawa, to consider the matter. Mr. Robichaud met with Mr. Sexsmith and Superintendent Nowlan, and discussed with them what he had heard from Mr. Albert. While still in Ottawa, Mr. Robichaud dictated a memorandum to file setting out what Mr. Albert had told him. Mr. Robichaud testified that he did not recall "rereading" the memorandum and that he returned to Montreal without having received a copy of it, that the typist started typing it as soon as it was dictated and that he left before a copy was available. He said that the memorandum was to be given to Mr. Sexsmith and that he was told that the report would be sent to both Mr. Dare and Commissioner Nadon. He said the conclusion reached at the meeting on May 31, 1977, was that the Security Service was in difficulty because of the nature of the allegations.

47. After receiving Mr. Albert's report on May 31, Mr. Robichaud had sufficient information relating to an alleged kidnapping to be able to find a file number at R.C.M.P. Central Registry in Montreal relating to the case of one Chamard. (We discuss the case of Mr. Chamard in Part VI, Chapter 5.) He says he went to Central Registry, got the file out and saw the newspaper clipping about the press conference which Mr. Chamard had held in 1972, and

just took the file number down. Following his return to Montreal from Ottawa, late in the evening of May 31, 1977, Mr. Robichaud asked Mr. Albert to meet with Mr. McCleery again.

48. According to Mr. Robichaud, before the first meeting between Mr. Albert and Mr. McCleery, his "... concern was what Mr. McCleery was going to tell the Solicitor General", not because it was going to be told to the Solicitor General, but rather, "... what operations he was going to bring up or in what form ...". He told us that if he were successful in obtaining information through sending Mr. Albert to talk to Mr. McCleery his intention was to give it to Mr. Sexsmith and that he had no idea what Mr. Sexsmith would do with it. He said his concern on May 31, shared by Mr. Sexsmith, was that Mr. McCleery would make public the allegations that he was recounting to Mr. Albert, and disclose other operational matters in one way or another that would cause them concern. Mr. Robichaud acknowledged that from December 1973, when Mr. McCleery was discharged from the Force, until May 1977, Mr. McCleery had not disclosed any matters with respect to operations compromising to the R.C.M.P., nor had anything happened in that time to justify the fear that Mr. McCleery would leak information to the news media.

49. Mr. Robichaud testified that he thought that the Solicitor General was going to be informed of the facts about the various matters for the simple reason that he, Robichaud, had passed them on to his superior officer who had no choice but to pass them on further and to cause them to be looked into. He told us that it was his impression that the results of the investigation into what was raised in his memorandum, or something about the allegations, would be brought to the Solicitor General's attention.

50. Commissioner Nadon and Mr. Dare were made aware of the contents of Mr. Robichaud's memorandum on June 1, 1977. Mr. Sexsmith said that he saw the Robichaud memorandum on June 1 and that he discussed with Mr. Dare whether there should be an internal investigation. Mr. Sexsmith — who in June 1977 was the Deputy Director General (Operations) of the Security Service — testified that the Security Service was interested in knowing why Mr. McCleery wanted to see Mr. Fox because they (the Security Service) "... were concerned Mr. McCleery would reveal [their] Cathedral Operations... and other operations such as surreptitious entries". He acknowledged "... that the Force had meant never to let the Solicitor General... know of practices or operations that were not authorized or provided for by law". He said that "... the Security Service kept certain operational things from the Solicitor General". According to Mr. Sexsmith "... the Security Service was not going to volunteer information concerning improper activities" and did not want the Solicitor General "... to become aware of these practices" because if he were aware of them he would be put "... in an impossible position". As a Minister of the Crown he could not "... live with knowledge which indicated that an organization he was primarily responsible for was committing illegalities or improprieties or wrongdoings, or whatever you want to call them". However, Mr. Sexsmith asserted that no effort was made to prevent Mr. McCleery from doing what he was going to do.

51. Commissioner Nadon told us that after Mr. Dare came to see him on June 1, and informed him that he, Dare, had received information from his Montreal office that there had been other irregularities, he immediately appointed Superintendent Nowlan and Inspector Pothier to investigate and confirm or deny these irregularities and set out his actions in a memorandum, dated June 1, to Mr. Dare.

52. In his memorandum of May 31, Superintendent Robichaud wrote:

When Albert questioned him [Mr. McCleery] as to what he meant by other incidents, he stated that he was referring to the dirty tricks department (DTD) that involved Inspector Hugo, Inspector Blier and Bernard Dubuc who, according to McCleery, would have been responsible for a kidnapping that was never identified as such but if it had been, they would have all gone to jail. In addition, there was an F.L.Q. hideout near Sherbrooke that burned and again he alleges that some of these members were involved. Thirdly, he mentioned that his own summer cottage in the Laurentians had been used by the Force to store dynamite.

He also wrote:

However, that the counter-measures group was comprised of the 3 people he mentions as well as Cst. Rick Daigle who, if memory serves me right, was a close associate of Don McCleery's.

(On June 1, Mr. Albert met Mr. McCleery again. Our report as to that second meeting is found in Part V, Chapter 5, of this Report.)

Both Mr. Nadon and Mr. Dare saw the Robichaud memorandum. Mr. Simmonds testified that he never saw Mr. Nadon's memorandum to Mr. Dare but that he was aware, on June 2 or June 7, that Superintendent Nowlan had been appointed. Mr. Simmonds testified that shortly after the appointment of Mr. Nowlan, he, Simmonds, was generally aware of the nature of the allegations of burning of a building and some acquisition of dynamite under conditions that might amount to theft.

53. Mr. Sexsmith told us that it was a natural assumption on his part that Mr. Nadon would have informed Mr. Fox, Mr. Tassé or Mr. Bourne that he had appointed an investigating team to investigate certain allegations that had been made. He says that, had he been replacing the Director General in one of the meetings with the Minister, he probably would have seen this as an important development that should have been conveyed to Messrs. Fox, Bourne or Tassé.

54. On the afternoon of June 6, 1977, Messrs. Tassé and Landry met with Messrs. McCleery and Brunet. According to Mr. Tassé's evidence, the ex-members complained about having been unjustly treated by the Commissioner and said that because of an affidavit filed under section 41 of the Federal Court Act they had had to stop their lawsuit against the government and the Commissioner but that if one got to the bottom of things one would realize that they had been unjustly treated. Mr. Tassé told us that Mr. McCleery and Mr. Brunet stated that the A.P.L.Q. incident was not the first time that the Solicitor General had been badly informed and that there had been other more serious acts committed by members of the R.C.M.P. while

they were members. Mr. Tassé said that they would not give details as to times, persons and events and that what they said was very general. Mr. Tassé testified that one of the reasons they advanced for not giving details was the Official Secrets Act and that he and Mr. Landry told them that it was very doubtful whether the Official Secrets Act applied.

55. Mr. McCleery testified that the reason they went to meet with Mr. Tassé and Mr. Landry was to discuss their own dismissal, and not for any other reason. On the other hand, he also said in his testimony that their going to Ottawa had nothing to do with their discharge from the Force; it had "everything to do with lying and fabrication and innuendo". He reconciled these two statements by explaining that his purpose in wanting to see Mr. Fox was to tell him or senior representatives of his office that the Force was lying to him just as it had lied to Mr. McCleery with respect to his discharge. His evidence was that the purpose of the meetings on June 6 and June 23 was to obtain a hearing with respect to his discharge and that he cannot recall if they discussed the incidents in the first meeting or whether it all came out when Messrs. Landry and Handfield went to Montreal for the second meeting. At the meeting on June 6, according to Mr. McCleery, Mr. Brunet mentioned the burning of a cottage but there was no detailed explanation because he, McCleery, would not explain it. According to Mr. McCleery, Mr. Tassé was probably not told on June 6 that the mail was being opened, and that was probably mentioned at the second meeting. Yet, Mr. McCleery then testified that he "guessed" that the matter of mail opening would have had to be mentioned on the 6th, otherwise Mr. Landry and Mr. Handfield would not have come to see them for the second meeting. On further reflection, Mr. McCleery told us that he knew that the mail issue was mentioned on June 6 as an example.

56. Mr. Brunet testified that Mr. McCleery told him he had arranged a meeting with the Solicitor General's office to discuss the circumstances of their dismissal and Mr. McCleery asked him to accompany him for support. He told us that the purpose of the meeting was to explain the circumstances of their dismissal to the Solicitor General in an attempt to get a proper hearing. He testified that they decided, in order to attempt to influence the Solicitor General to believe their story or to grant them a hearing, to point out to him that statements had been made in recent weeks in the press concerning illegal acts by the R.C.M.P., and in particular, statements that the A.P.L.Q. case was an isolated case, which were not the truth. They agreed that they would not go into any specifics but that they would cite some general headings and suggest to the persons with whom they met that those persons conduct their own internal inquiries, and that, if they were not successful in uncovering the truth, maybe he and Mr. McCleery would be willing to provide further information at later meetings. One of the first things that they wanted to determine was whether or not the Solicitor General's Department actually believed that the A.P.L.Q. incident was an isolated one. Mr. Brunet admitted that he is a little confused between what was said at the first meeting on June 6 and what was said at the second meeting on June 23. He did say there were more details given at the second meeting than at the first. He said that at the June 6

meeting they started off by telling Messrs. Tassé and Landry that breaking and entering was a weekly occurrence in the R.C.M.P., and that when Mr. Landry said that they were aware it was necessary to break into premises to put in technical installations he, Brunet, told them that breaking and entering took place rather frequently for the purpose of gathering evidence or gathering information that might be useful, without any intention of putting in a technical installation. As a descriptive phrase in discussing such incidents he told us that he does not think he made a distinction between "breaking and entering" and "theft of documents" and that he would have used either phrase. He said that at the June 6 meeting he thinks he mentioned the subject of arson but did not think he mentioned the cottage on that occasion.

57. Mr. Brunet told us that the only purpose of the June 6 meeting, as far as he and McCleery were concerned, was to discuss their case and the circumstances of their dismissal, and the rest of it was absolutely incidental. He said that the only reason they mentioned wrongdoings was that once they were convinced that those with whom they were meeting really believed what the R.C.M.P. was telling them about the A.P.L.Q. case being an isolated one, they would show them that in fact there were any number of incidents of illegal acts being committed. If they could convince the officials of that, then Messrs. McCleery and Brunet hoped that the officials might be ready to accept that the R.C.M.P. was lying when referring to their case.

58. In a memorandum to file dated June 7, 1977 (not filed with us as an exhibit), Mr. Landry noted his recollection of the June 6, meeting with Messrs. McCleery and Brunet. In that memorandum he said that Messrs. McCleery and Brunet had submitted that they had been unjustly treated on their dismissal, that they had been harassed by certain members of the R.C.M.P. since their dismissal, that in their case the Solicitor General and the Commissioner had not been informed of all the relevant facts, that this was not the first time that the Solicitor General had been misled by the R.C.M.P., and that the R.C.M.P. only told the Solicitor General what it pleased them to tell. The memorandum (in French) continued by recording that Messrs. McCleery and Brunet indicated that much more serious acts had taken place while they were members, including:

- participation and assistance to the C.I.A. in offensive activities in Canada;
- numerous thefts of documents;
- even arson (a cottage).

They suggest that many discontented members can provoke scandals by confiding information in their possession to the parliamentary opposition.

[our translation]

Mr. Landry noted that they did not wish their revelations to be seen as blackmail, that they stated that they had not disclosed any information to anyone else, and that they were giving the examples to convince Messrs. Landry and Tassé that the R.C.M.P. hid from the Solicitor General things that it ought to reveal. Mr. Landry said in his memorandum that Mr. Tassé had

asked for details of the alleged illegal acts but Messrs. McCleery and Brunet had declined to give any, but they had, however, left the impression that they would be willing to give more information at a later meeting.

59. Immediately after leaving the meeting with Messrs. McCleery and Brunet, Mr. Tassé went to the regular meeting, at the Solicitor General's office, between Mr. Fox and the R.C.M.P. Both Commissioner Nadon and Mr. Dare were among those present. Mr. Tassé made an oral report as to the meeting which he had just attended along the lines of a letter which he subsequently wrote on June 9, 1977, to Commissioner Nadon. An excerpt from that letter, in the English translation filed with us reads:

During our meeting with the Solicitor General, I mentioned that Messrs. Brunet and McCleery had referred to the A.P.L.Q. incident by indicating that, when they were with the Force, the RCMP had conducted much more serious operations than this. Without giving specific details, Messrs. McCleery and Brunet did mention, among others:

- assistance to the C.I.A. in espionage activities detrimental to Canada (prior to 1973);
- espionage activities for business purposes in a case involving the Federal Department of Commerce (Trade and Commerce (?) Tr.) (May 1964);
- arson (involving a cottage) about 1972 or 1973;
- numerous thefts of documents.

Messrs. McCleery and Brunet refused to elaborate further, but it is possible however that we may obtain more specific details concerning these statements at the meeting scheduled between the aforementioned parties and Attorney Landry.

60. Mr. Tassé told us that he indicated the general areas in which the allegations had been made and what little success they had had in getting details. Commissioner Nadon testified that at the meeting on June 6, 1977, he asked Mr. Tassé what the alleged improprieties were and Mr. Tassé listed three, four or five improprieties. Mr. Nadon testified that he, Nadon, then said:

This is exactly the same information that we have received — that I received on the 1st of June and I now already have Supt. Nowlan and Mr. Pothier down in Montreal investigating this; but we would appreciate any further information you have on these, because we have difficulty in identifying some of the irregularities that are indicated.

Mr. Nadon said that he spoke to Mr. Tassé about the Robichaud memorandum, told Mr. Tassé that they had similar information coming from Montreal, and that he mentioned the various items or areas that had been brought to his attention by the Robichaud memorandum. He testified that it was obvious at the meeting on June 6, after Mr. Tassé related what Mr. McCleery and Mr. Brunet had told him, that it was the same information he, Nadon, had received on June 1.

61. Mr. Nadon told us that there is nothing in the R.C.M.P. files to indicate that Mr. Fox was informed of the setting up of the Nowlan/Pothier investigation team, or that anybody in the Department of the Solicitor General was

informed of it. Nor have R.C.M.P. research and that of our staff turned up any documentary evidence that any such information was communicated to the Solicitor General or his staff.

62. Commissioner Nadon told us that usually, on days before meetings with the Solicitor General, someone from the Commissioner's office would phone the Solicitor General's office and provide subjects that the R.C.M.P. wanted to discuss. He says there is no reference on the agenda for the meetings of June 6 or June 14 to an intended discussion of the Nowlan/Pothier investigation team.

63. The evidence of Mr. Tassé and Mr. Fox is contrary to that of Mr. Nadon. Mr. Tassé testified that at the meeting of June 6 no one mentioned the existence of the Robichaud memorandum and that he became aware of it only in the autumn of 1979, that at the June 6 meeting no one from the R.C.M.P. informed him that members of the R.C.M.P. had met prior to June 6 with Messrs. McCleery and Brunet, and that at no time during that meeting did the Commissioner or anyone else from the R.C.M.P. indicate that they had received other allegations or that they were aware of the allegations that he had just told them about. Mr. Tassé told us that the R.C.M.P. appeared to be surprised to hear the report that he gave them concerning the meeting with Messrs. McCleery and Brunet, that they did not seem to understand what Messrs. McCleery and Brunet were talking about and said that the burning of a cottage meant nothing to them, but that they would investigate in Montreal to see if there were some basis for the allegation. He added that the R.C.M.P. members present left the impression that what Messrs. McCleery and Brunet were doing had the appearance of blackmail. Mr. Tassé said that he had no recollection of anyone saying that an investigation was already under way, and that it was not until November 1977 that he learned that an investigation had begun before June 6.

64. The testimony of Mr. Fox was that on June 6 it was his officials who were advising the R.C.M.P. of information which was at that time still very vague and uncertain and which seemed to be without foundation. He testified that the R.C.M.P. did not communicate their own more detailed information. Mr. Fox said that at the meeting Mr. Tassé reported at length on the request of Messrs. McCleery and Brunet to have their dismissal file re-examined and recounted that the major part of his meeting with them had dealt with the question of their dismissal which they found unjustifiable after all the work they had done for the Force. He said that Mr. Tassé reported that Messrs. McCleery and Brunet had indicated that Mr. Fox had not been completely informed about their dismissal file and that there were other activities to their knowledge which Mr. Fox had also not been informed about, and that he, Tassé, had questioned them on those subjects. Mr. Fox told us that the general reaction of all those present at the meeting of June 6, including the R.C.M.P. officers, was that this had all the appearances of being blackmail by Messrs. McCleery and Brunet, and that under the guise of getting their file opened they said that there were all sorts of things that were not proper which had been committed by members of the R.C.M.P. Mr. Fox testified that Mr. Tassé asked members of the R.C.M.P. present, "Does any of this ring a bell?" and the general reply

was "no", and that his own reaction, after seeing the reaction of the R.C.M.P. and Mr. Tassé, was that this was an attempt at blackmail. He told us that he said to Mr. Tassé that as far as he was concerned there was no question of allowing any blackmail and that, if Messrs. McCleery and Brunet had anything to tell them, they should be forced to say it. Mr. Fox said that he asked Mr. Tassé to have Mr. Landry contact Messrs. McCleery and Brunet to enjoin them to meet again and get to the bottom of the allegations to determine whether they were valid. Mr. Fox said that the four items mentioned in Mr. Tassé's letter of June 9 to Commissioner Nadon were the matters which had been raised at the meeting on June 6. Mr. Fox testified that he asked Commissioner Nadon to look through the files in Montreal to see if any elements of proof or facts could be found which would indicate that the innuendoes had some basis in fact.

65. According to Mr. Fox, he has no recollection of the R.C.M.P. members present indicating that they were aware of any allegations by Messrs. McCleery and Brunet. Mr. Fox testified that he was not aware of the Robichaud memorandum or its contents, and that no one from the R.C.M.P. indicated that someone had been appointed to investigate allegations by Messrs. McCleery and Brunet or that an investigation had begun.

66. Mr. Simmonds, who was also present at the meeting on June 6, testified that he recalls Mr. Tassé reporting in very general terms on some of the things he had learned as a result of discussion with Messrs. McCleery and Brunet. He said that the June 6 meeting first brought to light some of the incidents which would have caused the Commissioner to initiate an investigation. He testified that he does not recall Mr. Nadon saying that the R.C.M.P. had already heard this type of allegation, nor does he recall having been informed that what Mr. Nowlan was investigating was allegations of improper behaviour that had been communicated by Mr. Robichaud. He said he does not have any recollection about having been told by any of his colleagues, either going to the meeting or after the meeting, that they were already aware of that type of allegation. According to Mr. Simmonds, at the meeting there was an air of concern, perhaps even a bit of an air of disbelief, because it was pretty hard to believe that some of the things that were being referred to could have occurred. He added that there was an absolute concern to get to the bottom of it and find out the facts, but that there was a good deal of scepticism about whether or not the facts were as described. He said that he was alarmed at what he was hearing, and concerned, and he recognized the necessity to get to the bottom of it and very quickly. He said he does not know whether Mr. Nadon reported at that meeting that he had taken steps to examine those allegations.

67. Mr. Fox testified that after the meeting Mr. Tassé came to his office and he thinks that Mr. Tassé's reaction at that time was that the allegations were without foundation, that they were hare-brained and related to the desire of Messrs. McCleery and Brunet to have their dismissal files reopened.

68. Mr. Tassé told us that it was in the days following June 6, in conversation with Commissioner Nadon or someone else in the R.C.M.P., that he learned

for the first time that Superintendent Nowlan was in Montreal for the investigation.

(iii) *The recording of the Tassé/Sexsmith telephone conversation*

69. Assistant Commissioner Sexsmith testified that he was "curious" as to what Messrs. Nowlan and Pothier "were discovering in Montreal" and "desperately wanted to know whether the allegations were based in fact or not". On Mr. Sexsmith's initiative, Superintendent Nowlan was reporting to him internally on the progress of the investigation. Mr. Sexsmith said that he assumed that Mr. Nowlan and Mr. Pothier knew that he "did not have any direct function in relation to the investigation *per se*". In their report of July 12, 1977, to Mr. Dare and Assistant Commissioner Quintal, Superintendent Nowlan and Inspector Pothier wrote "... it was also agreed that Assistant Commissioner M.S. Sexsmith, Deputy Director General (Operations) would serve as a daily contact, if need be, for progress outlines and for logistics as related to the investigation in general". Mr. Sexsmith said that he accepts that statement in their report as being an accurate statement and that he did not receive daily reports, but saw Mr. Nowlan sometimes when the latter returned to Ottawa, often on a Friday afternoon, when Mr. Nowlan would tell him in general terms how things were going.

70. Mr. Dare told Mr. Sexsmith about the meeting that Mr. Tassé had had with Messrs. McCleery and Brunet on June 6 and what Mr. Tassé had reported about that meeting. Mr. Sexsmith testified that the allegation that the Security Service had committed commercial espionage in 1964 "was most intriguing" to him and that he was "most curious" to know the details. On June 9, Mr. Sexsmith telephoned Mr. Tassé, for the purpose, he told us, of obtaining full details of that particular allegation. Mr. Sexsmith testified that he does not recall having seen the draft of Mr. Fox's statement dated May 31, 1977, which was sent by Mr. Tassé to Commissioner Nadon, nor, he said, does he recall ever having had any discussion either with Mr. Nadon or Mr. Dare as to the accuracy of that draft statement. He told us that he recalls that the draft statement was placed before the R.C.M.P., and that Messrs. Nadon and Dare were involved, but he does not recall either of them inquiring of him as to the accuracy of the text.

71. Mr. Sexsmith taped his telephone conversation of June 9, 1977, with Mr. Tassé. He testified that he taped that conversation for his

... own edification and the edification of the people that were going to have to do the research and attempt to tie in a particular operational file with a particular allegation, if the allegation had any substance of truth.

He told us that he phoned Mr. Tassé to get the details from him concerning the allegation of commercial espionage because he knew that, if that had occurred there would be a record of it at Headquarters. Mr. Tassé testified that Mr. Sexsmith did not tell him that the conversation was being recorded, that he did not know that it was being recorded, that Mr. Sexsmith did not tell him after the conversation that it had been recorded and that he was informed only much

later, without specifying precisely when. Mr. Tassé told us that if Mr. Sexsmith had asked his permission to record the telephone conversation he does not know whether or not he would have given it. He said he thinks it was inappropriate for Mr. Sexsmith to record without telling him and he considers it is unethical to record, either by stenographic notes or on tape, spontaneous conversations that one has with others.

72. Mr. Sexsmith told us that, within hours of having recorded the telephone conversation, he had it transcribed by his secretary, Mrs. Rita Baker. He said he did not show the transcript to Mr. Dare or Commissioner Nadon and that he gave it to either Superintendent Venner or Superintendent Barr.

73. Mr. Tassé told us that he recalls specifically mentioning to Mr. Sexsmith, during the telephone conversation, that an important aspect of the statement which Mr. Fox proposed to make to the House was that the A.P.L.Q. incident was an isolated incident, that there were allegations, although vague, which had been made by Mr. McCleery and Mr. Brunet, and that it was important that the R.C.M.P. get the information and advise the Minister's office whether or not there was any foundation for the accusations. Mr. Tassé said that he thinks it was clear in everybody's mind that the statement by Mr. Fox had to deal with the A.P.L.Q. but that in making the statement he must also make the point that the R.C.M.P. was determined to operate, and would operate, within the confines of the law and that the A.P.L.Q. incident was an aberration.

74. Mr. Tassé added that at no time in the telephone conversation with Mr. Sexsmith did Mr. Sexsmith indicate that he had, or might receive, information which would indicate that there was some foundation to the allegations or that there were other allegations.

75. The transcription of the telephone conversation, typed by Mr. Sexsmith's secretary, purports, on page 7, to reproduce the conversation as it related to the statement to be made by the Minister. Following is a reproduction of page 7, in its entirety. (The line numbers in the right hand margin have been added by us for ease of reference.)

EXHIBIT MC-151

- 7 -

- R.T. I heard that Nowlan was in Montreal. Was he there to discuss with the Montreal people the kind of accusations or allegations that McCleery & Brunet had made. Have you received a report? [line 3]
- M.S. No he hasn't even got started really yet. He's still in Montreal, yes.
- R.T. Would it be possible for me to see your report on that?
- M.S. When we get it sure but my God it will be some time Roger I expect.
- R.T. Well, I hope there would be a preliminary report before the Minister makes the statement in the House because everyone may be a bit on the spot - I think you have seen the statement we're working ^{on} and they are strong statements that this wasn't an - the APLQ - wasn't an isolated incident and if right after making the statement they start talking about other things, I think many people will be in trouble. So as soon as he comes back perhaps we could just have a progressive report or some kind of indication as to what he has found and whether there seems to be any basis for this. [line 12]
[line 13]
[line 14]
[line 15]
[line 17]
[line 19]
[line 20]
- M.S. Roger, one more thing. In Toronto, if your read the Citizen last night or the Globe and Mail this morning, they're making noises about suspicion that the RCMP committed a breaking and entering of the James, Lewis and Samuels Publishing Co. [line 24]
[line 25]
- R.T. It was mentioned by Oberle last week.

An analysis of the transcription, prepared for us by the Centre of Forensic Sciences of the Province of Ontario, discloses the following corrections in typing made to page 7:

- line 3 — The first letter 's' in the word "accusations" was originally typed as the letter 'l'.
- line 12 — The letter 't' in the word "the" was originally typed as the letter 'i'. The letter 'e' has an erasure, however, the original typewritten letter cannot be deciphered. The letter 'o' in the word "House" was originally typed as a capital letter 'O'.
- line 13 — The letter 'e' was at one time typed to the right of the word "spot".
- line 14 — The letter 'k' in the word "working" was originally typed as a '-', the letter 'i' as the letter 'k', the letter 'n' as the letter 'i' and the letter 'g' as the letter 'n'. The letter 'g' was at one time typed between the words "working and". The letter 'y' in the word "they" shows an erasure, however, the original typewritten letter cannot be deciphered. The letter 'e' was at one time typed between the words "they are".
- line 15 — The letter 'w' in the word "wasn't" was originally typed as the letter 't' and the letter 'a' as the letter 'l'. The letter 's' shows an erasure, however, the original typewritten letter cannot be deciphered.
- line 17 — The letter 'g' in the word "things" was originally typed as the letter 'l'.
- line 19 — The letter 'g' in the word "progressive" was originally typed as the letter 'f'.
- line 20 — The letters 'a' and 'n' in the word "and" were originally typed as the letters 'w' and 'h'.
- line 24 — The letter 'a' in the word "making" was originally typed as the letter 'n'.
- line 25 — The letter 'J' in the word "James" was originally typed as a small letter 'j'. The letter 'a' in the word "Samuels" was originally typed as the letter 'm'.

Numerous corrections of a similar nature had been made on other pages. It is apparent from the forensic report that the typist had considerable difficulty in transcribing the tape recording. It will also be observed that, if the transcription was accurate, Mr. Tassé told Mr. Sexsmith that the statement being prepared would say that the A.P.L.Q. was *not* an isolated incident. This — again, on the assumption that the transcription was accurate — would raise a question as to the statement as it was finally delivered by Mr. Fox in the House of Commons on June 17, when he said that the A.P.L.Q. incident was isolated. We shall examine this issue when we reach our conclusions.

76. Mr. Tassé said that he assumed that Mr. Sexsmith was aware that in the statement to be made by the Minister there was strong wording to the effect that the A.P.L.Q. incident was an exceptional and isolated one. Mr. Tassé testified that at no time, during the months preceding this telephone conversa-

tion with Mr. Sexsmith, did he, Tassé, participate in any way in the preparation of a draft statement, to be used by Mr. Fox in the House of Commons, which said that the A.P.L.Q. incident was *not* an isolated incident.

77. Mr. Sexsmith told us that although Mr. Tassé said, during the telephone conversation, that he, Sexsmith, had seen the statement they were working on, he did not recall having seen it and did not know anything about it. Mr. Sexsmith said that when Mr. Tassé referred to the speech that Mr. Fox was going to make in June it obviously didn't mean anything to him, Sexsmith, because he didn't comment on it at all. He told us that he has no recollection of having any "input" or discussion with Mr. Fox or Mr. Dare or Commissioner Nadon or the Head of the Policy Planning and Coordination Branch (Superintendent Barr) concerning the statement of Mr. Fox subsequently made on June 17 in the House of Commons.

78. Mr. Sexsmith testified that he knew on June 13 that Mr. Fox was preparing a statement for the House, because on that day he saw an English translation of the June 9 letter from Mr. Tassé to Commissioner Nadon which said that Mr. Tassé and his people were working on a statement.

79. An endorsement, containing Mr. Dare's initials, on the face of the transcript of the telephone conversation indicates that Mr. Dare saw the transcript on June 9, the day that it was recorded and transcribed. Yet Mr. Dare told us that he was not aware that Mr. Sexsmith proposed to tape his conversation with Mr. Tassé and became aware of the taping only long after the event, indeed, since the time of the creation of this Commission. Mr. Nadon testified that he was informed by Mr. Dare in June 1977 that there had been a conversation between Messrs. Tassé and Sexsmith but that he was not informed that it had been taped. He said that previous testimony given by him, to the effect that he had read the transcript before he left the Force, was inaccurate, and that he first learned of the taping of the conversation when he was preparing for the hearings, some considerable time after he left the Force.

(iv) *Mr. Fox's statement of June 17, 1977, in the House of Commons*

80. On June 14 Mr. Tassé forwarded to Commissioner Nadon a further draft of the proposed statement to be made by Mr. Fox, and asked for his and Mr. Dare's comments at the earliest possible time.

81. The draft statement of June 14, 1977, contained the following comments:

The Hon. Warren Allmand undertook in the days immediately following March 16, 1976, to discuss the whole matter with the Prime Minister. The Government seriously considered the creation of a Royal Commission of Inquiry at that time. The Government received, however, repeated and unequivocal assurances from the R.C.M.P. that the A.P.L.Q. incident was exceptional and isolated and that the directives of the R.C.M.P. to its members clearly require that all of their actions take place within the law.

And later on in the draft is found the following:

In the event doubts persist, I repeat, what I said earlier: an illegal entry into any premises, whatever the intention or purpose, is completely unacceptable

to me and to the government and is not, under any circumstances, to be tolerated. The commitment to this view is one that is shared by the Commissioner of the R.C.M.P. and by the Director General of the Security Service and will be the basis upon which any allegations of illegal conduct, either on the part of members of the R.C.M.P., whether of the Security Service or those involved in regular police activities, will be viewed.

And still later:

In addition, I trust that my statement today will have dispelled all possible doubt concerning our commitment to ensure that the operations of the R.C.M.P. take place within the constraints of the law. In addition, the Commissioner of the R.C.M.P. and the Director General of the Security Service fully recognize the need to bring to my attention, clearly and unequivocally, any breach, on the part of their members, of the clear directives of the R.C.M.P. in that regard.

82. Mr. Tassé said that at least a couple of times in the course of his conversations with Commissioner Nadon about the draft statement he asked about the progress of the investigations in Montreal and was told that there was no progress, for one reason or another, and therefore there was nothing to report.

83. Commissioner Nadon testified that he found the draft statement of June 14 to be factually correct. He said that he recalls reading the sentence in the June 14 draft which says "The Government received, however, repeated and unequivocal assurances from the R.C.M.P. that the A.P.L.Q. incident was exceptional and isolated and that the directives of the R.C.M.P. to its members clearly require that all of their actions take place within the law." Mr. Nadon considered that this is what the R.C.M.P. had told the government prior to June 14 by correspondence and otherwise.

84. Mr. Tassé told us that in his opinion it was clear that the senior officers of the R.C.M.P. should immediately have told him if they had been aware of any foundation to the allegations made by Messrs. McCleery and Brunet. He told us that, if the part of Mr. Fox's proposed statement which referred to the exceptional and isolated character of the A.P.L.Q. incident was inaccurate, it should, under such circumstances, have been brought to their attention immediately by the R.C.M.P. The assurances had been given to them over the course of the years, according to Mr. Tassé, and he took it for granted that, if the assurances had been given, it was because the R.C.M.P. were in a position to give them. Mr. Tassé told us that the assurance that was given in his presence was that, as far as the senior officers of the R.C.M.P. were concerned, and as far as R.C.M.P. policy was concerned, members were supposed to live within the law and had been doing so and that anyone who did not live within the law was subject to be disciplined in the ordinary course.

85. Mr. Fox testified that there were no reservations in the assurance that had been given to him that there were no other illegal activities and he was convinced when those assurances were given to him that, if there were other cases within the knowledge of the R.C.M.P., they would be brought to his attention. He said that between May 31 and June 17 there was a series of

versions of the statement prepared which were always put to the R.C.M.P. for comment to ensure the accuracy and truth of the facts. He told us that during those weeks he and his officials were assured by the R.C.M.P. that the statements in question were accurate and that there was absolutely nothing communicated to him during the period from June 6 to June 21 that would have led him to believe that there was any foundation for the matters raised by Messrs. McCleery and Brunet.

86. Mr. Tassé said that at no time before June 17 was it indicated to him that the investigation by the R.C.M.P. seemed to reveal things which were troubling. He testified that between June 6 and June 29, 1977, he did not receive from anyone in the R.C.M.P. additional information or reports relative to the incidents or irregularities alleged by Messrs. McCleery and Brunet, or with respect to other allegations concerning members of the R.C.M.P.

87. On June 16, in response to a question in the House of Commons, Mr. Fox advised the House that the statement that he intended to make the following day would cover only the A.P.L.Q. matter and not other incidents raised in the House. On June 17, 1977, Mr. Fox made the statement in the House of Commons.

88. Mr. Fox testified that the undertaking which had been given to Parliament was to examine and make a statement in Parliament about the A.P.L.Q. incident and that the statement dealt with all matters relating to the A.P.L.Q. file. Mr. Tassé said that the statement was limited to the A.P.L.Q. affair, and that Mr. Fox did not wish to paint a complete picture of all that had gone on and all the accusations which had been made at that time against the R.C.M.P. Mr. Tassé added that what they wished to show by the statement was that illegalities within the R.C.M.P. were not tolerated and that, when they were discovered, measures were taken before tribunals or otherwise, and that it was not the practice of the R.C.M.P. to conduct operations which were contrary to the law and to have, in effect, institutionalized illegalities. Mr. Tassé explained that if an overzealous police officer or security officer burned a barn, that was not necessarily inconsistent with the statement that Mr. Fox had made in the House of Commons, provided that when an act like that was brought to the attention of officers or responsible members of the R.C.M.P., appropriate actions were taken at the time and the authorities responsible for the administration of justice in the province were advised of the matter.

89. Mr. Fox's statement of June 17, 1977, repeats almost word for word the June 14 draft statement previously cited. Mr. Fox told us that he still believes that the June 17 statement was correct at that time because, he said, the A.P.L.Q. matter "... was the only incident that had been confirmed to our knowledge ... it was the only incident that we had". [our translation]

90. Commissioner Nadon testified that, at the time he made the statement in the House Mr. Fox was aware of the other allegations that were being investigated, so he, Nadon, did not have to bring them to Mr. Fox's attention. Mr. Nadon said that he saw the statement of June 17 as being an accurate statement of the development of the A.P.L.Q. affair. However, he said that on June 17, he would not have given repeated and unequivocal assurances that the

A.P.L.Q. incident was exceptional and isolated and that he would have added to the statement that, because an investigation was on at the time, there were matters that had to be confirmed or denied. He said he did not make such an addition to the statement because Mr. Fox was already aware of the investigation. Mr. Nadon said that he brought to the attention of the Minister, clearly and unequivocally, any breach by members of the clear directives of the R.C.M.P.

91. Mr. Tassé told us that in the context of the events from May 31 to June 17, 1977, there is no doubt in his mind that the Robichaud memorandum should have been brought to his attention, as it would have been essential to enable him to advise the Minister. He added that the Robichaud memorandum disclosed facts which seemed at that time to confirm the presence of institutional irregularities, which was something Messrs. McCleery and Brunet had not disclosed to Mr. Tassé and, he said, the memorandum would have resulted in a completely different statement being prepared for delivery by Mr. Fox because it was not made by someone who had been fired from the Force for cause but by a member making a report to Headquarters. He indicated that in the Robichaud report "... one begins to see, without it having been established to the point that one could say there were criminal acts in the sense that a tribunal would so find, there were details which would have thrown a completely different light on the whole situation". [our translation]

(v) *Events subsequent to June 17, 1977*

92. On June 21 Mr. Fox met members of the R.C.M.P. The agenda included both a proposed meeting between Mr. Landry and Messrs. McCleery and Brunet and the Province of Quebec's inquiry with respect to the A.P.L.Q. matter. Since Commissioner Nadon and Deputy Commissioner Simmonds were both in the Atlantic Provinces at the time, they were not at the meeting. Mr. Fox testified that at that June 21 meeting there was no further information from the R.C.M.P. with respect to the allegations passed on to them on June 6 and that once again the R.C.M.P. members present raised the problem that the information which they had was so vague and imprecise that they had no way of going through the files to determine during what period or in what area things might have occurred. According to Mr. Fox, the R.C.M.P. said that they needed more information in order to come up with dates, places and times and that they needed a little more information as to the people involved before they could investigate properly the information provided by Messrs. McCleery and Brunet on June 6.

93. On June 23 Messrs. Landry and Handfield met with Messrs. McCleery and Brunet in Montreal and by memorandum dated June 24, 1977, reported the results to Mr. Tassé. Mr. Fox received a copy of it that same day, and Mr. Tassé gave a copy the following Monday, June 27, to Commissioner Nadon.

94. According to Mr. Fox, on June 27 or 28 he met with the Prime Minister to advise him of the developments. Mr. Fox said that the report of June 24 rid him of any idea he may have had of blackmail by Messrs. McCleery and Brunet.

95. Some time during the trip of Commissioner Nadon and Deputy Commissioner Simmonds to the Atlantic Provinces, between June 19 and June 24, Commissioner Nadon received a telephone call from Mr. Dare. Immediately following the call, according to Mr. Simmonds, Mr. Nadon told him that the R.C.M.P. had discovered a dirty tricks department, G4, and that they did not know the extent of its activities but that the investigation had confirmed some of the things that had been reported to the Deputy Minister. Mr. Simmonds told us that Mr. Nadon expressed great surprise and alarm at what he had been told. Mr. Simmonds said that he believes that the information received by Mr. Nadon in that telephone call came from the early work of Superintendent Nowlan's investigation, and that Superintendent Nowlan had confirmed some facts to Mr. Dare who had then telephoned to Mr. Nadon.

96. Commissioner Nadon testified that he does not know whether he had received any preliminary or interim reports before June 14 with respect to the Nowlan/Pothier investigation, and that he does not know whether, as of June 19, R.C.M.P. Headquarters had received any preliminary report. He said that an interim report was submitted by Messrs. Nowlan and Pothier on June 21, 1977. He added that he cannot say for certain that any information about the work of Messrs. Nowlan and Pothier was communicated to anyone in the Solicitor General's Department.

97. Commissioner Nadon stated that on June 29 Assistant Commissioner Quintal reported verbally to him, confirming that some of the irregularities that had been alleged had in fact occurred; prior to this briefing he had had other briefings by telex and advice from Mr. Dare with respect to the investigations.

98. Mr. Fox said that he met with R.C.M.P. officers on June 29 and at that meeting Commissioner Nadon told him that he could now verify that the preliminary investigations showed that the allegations were well founded concerning a burning, a theft of dynamite and problems of recruitment of sources. Mr. Fox said this was the first time he heard talk of theft of dynamite, or allegations concerning recruitment of sources. On June 29, Commissioner Nadon wrote to Mr. Fox requesting that a commission of inquiry be appointed.

99. On July 6, 1977, Mr. Fox made a statement in the House of Commons which included the following:

Since making my statement in the House concerning the APLQ incident, allegations have been made that members of the RCMP, and more particularly members of the Security Service, have, on other occasions, been involved in unlawful action in the discharge of their duties. The APLQ incident, according to those who made the allegations, was not of an isolated and exceptional character as I had reported in my statement of June 17.

These allegations received our immediate attention. At my request, the Deputy Solicitor General of Canada and the Assistant Attorney General, criminal law, personally met with some of the individuals who made these allegations. In addition, I asked the Commissioner of the RCMP to undertake the investigations which were warranted. He later informed me, after having made preliminary inquiries, that some of these allegations might well have some basis in fact.

(vi) *Knowledge of the Ministers, senior government officials and senior members of the R.C.M.P.*

100. We have already set out in Part III of this Report the extent to which Mr. Allmand, Mr. Fox and Mr. Tassé did or did not have knowledge of the various illegal practices of the R.C.M.P. However, it is now necessary to summarize that information in order to assess the extent, if any, to which they were deceived by the assurances of the R.C.M.P.

101. We have also set out in Part III a detailed examination of the knowledge of Commissioner Nadon and Mr. Dare with respect to those same practices. Because they were the persons giving the assurances, it is also necessary to summarize their knowledge to arrive at a determination as to deception.

Mr. Allmand

102. In March and April 1976 the only activities of the R.C.M.P., about which Mr. Allmand was aware, that give rise to questions of legality were surreptitious entries for the purpose of observing or photographing documents. Mr. Allmand believed, however, that such entries were legal. He was also aware of surreptitious entries for the purpose of installing electronic eavesdropping devices and had been told, specifically, that such entries were legal. At that time Mr. Tassé's state of knowledge was the same as Mr. Allmand's. By letter dated June 9, 1976, from Mr. Cullen to Mr. Allmand, both Mr. Allmand and Mr. Tassé became aware that the R.C.M.P. obtained information from the Department of National Revenue for purposes other than the enforcement of the provisions of the Income Tax Act and also became aware that this was contrary to the confidentiality provisions of the Income Tax Act. Neither Mr. Allmand nor Mr. Tassé was aware of any instance of such violations.

Mr. Fox

103. On June 17, 1977, Mr. Fox was aware of surreptitious entries for the purpose of installing electronic interception devices. He believed that such entries were legal pursuant to the provisions of the Protection of Privacy Act and relied on a legal opinion of the Department of Justice to that effect. Mr. Fox had also received an opinion to the effect that the words "interception of communications" in the Official Secrets Act could apply to written communications as well as oral communications. Mr. Tassé's knowledge on this subject at this time was the same as that of Mr. Fox.

Mr. Nadon

104. We have had a great deal of difficulty in assessing the knowledge of Mr. Nadon, who, as Commissioner, was the principal spokesman for the Force. In 1976 he had been a member of the R.C.M.P. for 35 years, during which he had worked his way from the bottom of the organization to the top. He says he knew nothing about mail-opening except to the extent that it involved postal officials and that it was, he assumed, legal. Yet the evidence is clear that, for years, both the C.I.B and the Security Service had been opening mail illegally, and in the Security Service an official code word, Cathedral "C", had been

given to the practice. We have no doubt that Mr. Nadon was aware of the code word, Cathedral, prior to 1976, probably at least as early as August 1974 when he reviewed the Samson Damage Report with Mr. Dare. There is no evidence that Mr. Nadon made any effort to find out what Cathedral operations involved.

105. Mr. Nadon was aware of the practice, on both the C.I.B. and Security Service side, by which members while on private premises observed documents, and made notes of, or photocopied, the documents. He was, however, not aware of this being done on the C.I.B. side during entry into premises "illegally", by which he appears to mean without the consent of a person entitled to give consent or without a search warrant, and his evidence with respect to the Security Service side is ambiguous at best. Once again, he was clearly aware, at least as early as 1974, of the Security Service code word for such entries without warrant (PUMA), but appears not to have been interested in pursuing the matter.

106. With respect to access by the Force to income tax information, to be used for purposes unrelated to enforcement of the Income Tax Act, the only knowledge that Mr. Nadon had about such access was with respect to biographical data, and he considered it to be a question of legal interpretation as to whether such data was included in the proscription of the statute against disclosure.

107. Although Mr. Nadon says that he did not become aware of Operation HAM until after he left the Force, we have concluded that at least some aspects of it were brought to his attention at the time that he discussed the Samson Damage Report with Mr. Dare. We accept Mr. Nadon's evidence that he probably did not read that report. We have no doubt from Mr. Nadon's evidence that Operation HAM, which is mentioned in that Damage Report, was discussed with him by Mr. Dare in August 1974, although we cannot say to what extent the details, or even the code name, were given to him. Whatever the extent of his knowledge, Mr. Nadon did not choose to inquire further.

108. We conclude that in March and April 1976 Mr. Nadon could, based on what he knew personally, provide the general assurances that he did at that time. But that is not to say that it was proper, under the circumstances, to give those assurances. We shall deal with this question in the conclusions to this chapter.

Mr. Dare

109. Mr. Dare also gave general assurances. His assurances are even more significant since he was speaking on behalf of the Security Service and it should have been clear to him at that time, even if it was not clear to others outside the Force, that Mr. Nadon appeared to be almost totally unaware of techniques used or operations carried out by the Security Service.

110. Late in 1973 or in early 1974, Mr. Dare was briefed about Cathedral A, B and C operations and was advised that these operations had been suspended on June 23, 1973. He did not know, at that time, of any particular Cathedral

"C" (mail opening) operation that had been carried out and he first became aware of a specific operation in June 1976. In the Samson Damage Report, which he received from his Deputy Director General (Operations) in August 1974, he was clearly made aware that "mail intercepts" were occurring. Although when he himself used the word "intercept" in relation to mail he meant "open", he apparently did not inquire further of his Deputy Director General (Operations) as to what the latter meant in this regard in the Damage Report.

111. Mr. Dare was aware, from some time shortly after becoming Director General on May 1, 1973, that the Security Service conducted surreptitious searches of premises, without warrants. In his opinion such searches between May 1, 1973, and June 30, 1974, were illegal and, after the Privacy Act came into effect on July 1, 1974, such searches, which were then, as far as he knew, always conducted in conjunction with an oral communication warrant granted under the new legislation, were legal. It is not clear from his testimony whether his opinion as to the illegality of the searches prior to July 1, 1974, was an opinion that he held between May 1, 1973, and June 30, 1974, or whether it was an opinion arrived at later.

112. Mr. Dare was aware from 1974 that the Security Service was obtaining income tax information from the Department of National Revenue for purposes totally unrelated to enforcement of the Income Tax Act. He did not consider such conduct to be illegal, although he did not direct his mind to the question of legality.

113. Mr. Dare knew about Operation HAM as early as August 1974. He testified that he did not consider it to be illegal, and that he did not consider it to be a seizure because the tapes were returned. This is impossible to reconcile with his evidence that he considered surreptitious entries to search, prior to July 1, 1974, to be illegal.

Conclusions

(a) As to misleading generally

114. Our concern, here, is the extent to which the senior R.C.M.P. officers, who dealt directly with the Solicitors General in 1976 and 1977, misled them. On March 16, 1976, the participation of the R.C.M.P. in Operation Bricole was first brought to the attention of Mr. Allmand and Mr. Tassé by the R.C.M.P. In March and April 1976 both Commissioner Nadon and Mr. Dare gave specific assurances to Prime Minister Trudeau, Mr. Allmand, Mr. Tassé and Mr. Pitfield that Operation Bricole was an exceptional and isolated incident. The only reservation they expressed was with respect to surreptitious entries for the purpose of carrying out electronic eavesdropping.

115. In Mr. Nadon's letter of April 23, 1976, to Mr. Allmand and in the proposed statement for use by the Minister which was attached to it, are found the following statements previously cited:

4. On the advice of the present Director General of the Security Service, I am prepared to assure you, without equivocation, that there is no precedent

for a search and seizure operation by the Security Service in Montreal, acting alone or in concert with other Police Forces, and there has been no repetition.

...

10. My assurance that there has been no previous case of its kind and that such action has not been repeated by the Security Service in Montreal, will, I trust, assist you in disposing of this isolated incident to the satisfaction of the Government and the House.

and,

This is the only incident wherein the RCMP Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation, alone or in concert with members of other policy agencies.

This letter and draft statement were prepared by the Security Service, approved by Mr. Dare and submitted by him to Commissioner Nadon for signature. It is true that the assurances in those two documents are not general in nature. The letter speaks specifically of "a search and seizure operation by the Security Service in Montreal" and of "no previous case of its kind" and still further "that such action has not been repeated by the Security Service in Montreal". The draft statement is slightly broader in that it talks of Operation Bricole being "the only incident wherein the R.C.M.P. Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation", thus not limiting the matter geographically to Montreal. We are convinced, based on the evidence of Messrs. Allmand and Tassé, that the assurances sought and given verbally in March and April 1976 were of a general nature to the effect that there were no R.C.M.P. activities which, although illegal, had been authorized or condoned by the Force, and that such assurances were not limited by the type of language found in the letter and draft statement. We accept Mr. Tassé's evidence that the only reservation expressed by the R.C.M.P. was with respect to surreptitious entries to install electronic eavesdropping devices prior to the coming into force of the Protection of Privacy Act in 1974. We are satisfied that the assurances given by the R.C.M.P. were made by Commissioner Nadon and Mr. Dare. It is clear that the assurances given by the R.C.M.P. were the principal factor which motivated the government not to set up a Commission of Inquiry in 1976. It is therefore important to determine the extent to which both those giving the assurances and those to whom they were being given knew that such assurances were not accurate.

116. Having regard to what he knew in March and April 1976 we are of the opinion that Mr. Dare either intentionally or negligently misled both the Solicitor General and the Prime Minister and thus permitted the government to adopt a course of action which it undoubtedly would not have followed had he not so misled them. Whether he uttered the assurances himself or remained silent while Commissioner Nadon made them, the effect is the same. He allowed general assurances to be given that there were not, and had not been, other activities of the R.C.M.P. which were illegal and had been authorized by the Force. He knew there had been a practice of surreptitious entries between May 1, 1973, and June 10, 1974, which, according to his testimony, he

considered to be illegal. He knew about Operation HAM and told us that he had considered it not to be illegal, and that he also considered that Operation Bricole was not illegal, yet he approved the draft letter of April 23, 1976, sent by Commissioner Nadon to Mr. Allmand, which stated: "The operation was clearly contrary to the rule of law, the very basis on which this Force is founded". He should have candidly discussed all these matters with Commissioner Nadon, and if Commissioner Nadon had not then revealed them to the Solicitor General and the Prime Minister, Mr. Dare ought to have done so himself. We consider that there is no justification whatsoever for this course of conduct on his part.

117. We turn now to 1977. In January 1977, the same general assurances were given to the new Solicitor General, Mr. Fox, as had been given in 1976 to both his predecessor, Mr. Allmand, and to the Prime Minister. The assurances were again given by Commissioner Nadon and Mr. Dare. By this time two things had occurred which changed the picture slightly. First, in July 1976, Mr. Dare had been informed by Assistant Commissioner Sexsmith of a specific mail-opening operation which had been going on in the Ottawa area, and that it had been terminated. Thus, Mr. Dare was now aware not only that there had been a mail opening policy but also that there had been an operation. Second, in June 1976, the Minister of National Revenue, Mr. Cullen, had informed the Solicitor General, Mr. Allmand, by letter, that there were "technical" violations of the Income Tax Act "when tax information is provided to the Force for purposes other than those of the Income Tax Act". Commissioner Nadon saw that letter.

118. In the present context we place little significance on the reference, in Mr. Cullen's letter, to "technical" violations. It was clear that amendments to the Act were being proposed by the Department of National Revenue and Mr. Allmand was aware of that fact. Commissioner Nadon and Mr. Dare could reasonably infer that, upon assuming the Solicitor General's portfolio, Mr. Fox had been apprised by his Deputy Minister, Mr. Tassé, of the situation. We have no evidence as to whether or not that, in fact, happened.

119. Following the meeting on January 25, 1977, at which the assurances were given to Mr. Fox, the latter met with the Prime Minister, at which time the appointment of a Commission of Inquiry was once again discussed and rejected. There was still nothing of consequence that had been placed before the Ministers except Operation Bricole.

120. We consider that Mr. Dare was duty bound to bring to the attention of Commissioner Nadon and Mr. Allmand the knowledge which he had received about the mail-opening operation in Ottawa. At the time that the assurances were being given to Mr. Fox that there were no other illegalities, Mr. Dare also ought to have brought to Mr. Fox's attention his knowledge about Operation HAM, surreptitious entries and the provision of income tax information to the Security Service. Again, we can find no justification for his conduct at that time.

121. There was no relevant change in the factual information that Commissioner Nadon had between April 1976 and January 1977 and we do not find

that he intentionally deceived Mr. Fox in giving the general assurances that he did. However, with respect to the general assurances given in both 1976 and 1977 we think that he was derelict in his duty in not having pursued some matters, the significance of which should have sprung out at him. Had he done so, he would not have been in the position of misleading two Solicitors General and the Prime Minister and, through them, the House of Commons and the people of Canada. There can be no excuse for his not having inquired into Cathedral Operations, PUMA Operations, and Operation HAM. These were all brought to his attention, whether in the form of a code word or otherwise, at least as early as his discussions with Mr. Dare on the Samson Damage Report. As Commissioner of the R.C.M.P. it was his duty to know what the policies of both the Security Service and the C.I.B. sides of the Force were, and to make appropriate inquiries about matters with which he was not familiar. It was improper conduct on his part to give assurances to his Ministers and the Prime Minister when he had turned a blind eye to what was occurring in the Security Service.

122. On May 31, 1977, Mr. Tassé sent to Commissioner Nadon the draft of Mr. Fox's intended statement to the House of Commons. The draft statement contained the following comments:

I want to emphasize, in no uncertain terms, that entry of premises without lawful authorization, whatever the intent or purpose, is not acceptable to me and the government and cannot, under any circumstances, be condoned. I can assure Honourable members that this position is shared by the Commissioner of the R.C.M.P. and the Director General of the Security Service and that any allegations of unlawful action on the part of members of the Force, whether on the security side or the criminal side of the Force, will be vigorously pursued.

In a democratic society like Canada, it is essential that those charged with the enforcement of our laws and the protection of fundamental freedom have the full support of Canadians. Such a support, in turn, can only result from the trust Canadians have that police forces operate within the limits of the laws in the discharge of their responsibilities. I hope that my comments today will have convinced you, Mr. Speaker and Honourable members, as well as Canadians, at large, that the A.P.L.Q. operation was indeed an exceptional and unique affair, indeed an unfortunate affair. I trust that any doubt that may have arisen as to our determination as a government, or the R.C.M.P. determination, to abide by the rule of law will have been dispelled.

123. On May 31, 1977, Superintendent Robichaud prepared a memorandum setting out the matters that Mr. McCleery had said he might disclose to the Solicitor General. Those matters were:

- (a) a "... dirty tricks department (DTD) that involved Inspector Hugo, Inspector Blier and Bernard Dubuc who ... would have been responsible for a kidnapping. ..."
- (b) "... an FLQ hideout near Sherbrooke that burned and again he alleges that some of those members were involved"
- (c) "... his own summer cottage in the Laurentians had been used by the Force to store dynamite"

- (d) "... the Force has been responsible for Securex losing a number of contracts and that they keep harassing them".

In the memorandum Mr. Robichaud added the following:

- (a) "Insofar as the dirty tricks department, I believe this was the counter-measures taken by "G" Section in certain instances at that time and the alleged kidnapping would have been a disruptive source recruiting attempt made on one Andre Chamard, [File number]"
- (b) "the counter-measures group was comprised of the 3 people he mentions as well as Cst. Rick Daigle who, if memory serves me right, was a close associate of Don McCleery's"
- (c) "The alleged kidnapping would have taken place about June 8th, 1972 at a time when McCleery would have been in "G" Section."

On June 1, 1977, Commissioner Nadon and Mr. Dare saw this memorandum. Commissioner Nadon immediately appointed two investigators to look into what Mr. McCleery had alleged.

124. On June 6, 1977, Messrs. Tassé and Landry met with Messrs. McCleery and Brunet. At that meeting Messrs. McCleery and Brunet made some general allegations of serious misconduct on the part of the R.C.M.P. Mr. Landry noted those allegations in part as:

- participation and assistance to the C.I.A. in offensive activities in Canada;
- numerous thefts of documents;
- even arson (a cottage).

[our translation]

Mr. Tassé noted them in a letter to Mr. Nadon as:

- assistance to the C.I.A. in espionage activities detrimental to Canada (prior to 1973);
- espionage activities for business purposes in a case involving the Federal Department of Commerce (Trade and Commerce (?) Tr.) (May 1964);
- arson (involving a cottage) about 1972 or 1973;
- numerous thefts of documents.

[English translation, Ex. MC-149.]

125. On June 6, 1977, immediately following that meeting, Mr. Tassé attended a meeting at which those present included Mr. Fox, Commissioner Nadon and Mr. Dare, and he told them what Messrs. McCleery and Brunet had alleged. We are convinced by the evidence of Mr. Fox, Mr. Tassé and Mr. Simmonds (then Deputy Commissioner) that no member of the R.C.M.P. present at that meeting gave any inkling to Mr. Fox or Mr. Tassé that an investigation of allegations by Messrs. McCleery and Brunet was already in progress, or even that the R.C.M.P. had knowledge of any such allegations. We note that at least one allegation, that relating to the burning of a building, is common to both the Robichaud memorandum and what was conveyed by Mr. Tassé to the meeting. We also note that there were more details of this incident already in the possession of the R.C.M.P. than had been conveyed by Messrs.

McCleery and Brunet to Mr. Tassé and relayed by him to the meeting. We are also convinced that at the meeting the R.C.M.P. officers present left the impression with Mr. Fox and Mr. Tassé that this was the first they had heard of any such allegations, that they were surprised by them and that it was likely that Messrs. McCleery and Brunet were simply attempting blackmail to obtain a reversal of their dismissal. We do not accept Commissioner Nadon's evidence that he told Mr. Tassé, at the meeting, about the information that he already had through the Robichaud memorandum and that he had appointed investigators to look into the allegations.

126. Had Commissioner Nadon and Mr. Dare advised Mr. Fox and Mr. Tassé about the allegations which were already under investigation, Mr. Fox and Mr. Tassé might have, and probably would have, taken a totally different position as to what ought to be done. The allegations in the Robichaud memorandum are much more precise and capable of investigation than those made by Messrs. McCleery and Brunet on June 6, 1977, and thus, if they had been known to Mr. Fox and Mr. Tassé, would have given rise to much more suspicion that there might have been some substance to them. Commissioner Nadon and Mr. Dare, however, allowed Mr. Fox and Mr. Tassé to continue in their ignorance of the existence and contents of the Robichaud memorandum after June 6, while consideration was being given to further drafts of the statement to be made by Mr. Fox, and even after the statement had been made by him on June 17, 1977. They allowed Mr. Fox to take a position and to make statements which he clearly would not have made had they made him aware of all the facts in their possession. Commissioner Nadon's evidence that Mr. Fox's statement was factually correct is spurious, and shows a measured contempt for the concept of ministerial responsibility and accountability. Mr. Nadon knew that the intention of the statement was to assure the House of Commons and the Canadian public that Operation Bricole was "exceptional and isolated" and that the R.C.M.P. had not engaged in any other illegal activities, and he also knew that he had under investigation some serious allegations in which names and geographical locations had been given. We believe that both Mr. Nadon and Mr. Dare intentionally deceived Mr. Fox by withholding information from him and that the purpose of such deceit was to attempt to save face for the Force. This conduct was both misguided in motive, and wrong.

(b) The Tassé/Sexsmith telephone conversation

127. We now wish to comment on the telephone conversation of June 9, 1977, between Assistant Commissioner Sexsmith and Mr. Tassé. That telephone conversation was initiated by Assistant Commissioner Sexsmith and was tape-recorded by him without the consent or knowledge of Mr. Tassé. There is, of course, nothing illegal in recording a telephone conversation to which one is a party. Nevertheless, under the circumstances we think that Mr. Sexsmith's conduct was unacceptable conduct by a member of the R.C.M.P. in his dealings with a government official. We cannot think of anything more calculated to destroy the conditions of trust which must exist between the senior management of the R.C.M.P. and senior officials in the government, than this type of conduct. There is more than a touch of irony in the words of a

written communication, dated January 6, 1976, from Mr. Sexsmith to the R.C.M.P. Liaison Officer in Washington, in which Mr. Sexsmith was explaining the reasons for the termination of Warren Hart as a source of the R.C.M.P. Mr. Sexsmith said, among other things:

The very fact that he [Hart] would surreptitiously tape an interview he held with the Solicitor General attests to his scruples.

128. As far as the transcript of the tape recording is concerned, we are satisfied that the statement attributed to Mr. Tassé on page 7 of the transcript does not accurately reflect what he said. The part in question reads:

R.T. Well, I hoped there would be a preliminary report before the Minister makes the statement in the House because everyone may be a bit on the spot — I think you have seen the statement we're working on and they are strong statements that this wasn't an — the APLQ — wasn't an isolated incident and if right after making the statement they start talking about other things, I think many people will be in trouble.

This leaves the impression that Mr. Tassé said that the draft statement being prepared for delivery by Mr. Fox contained a statement that Operation Bricole was *not* an isolated incident. There are a number of reasons for our conclusion that the transcript is inaccurate. First, there is Mr. Tassé's sworn testimony that no draft of the statement ever said that Operation Bricole was not an isolated incident. We have no reason whatever to doubt the evidence of this public servant. There is no evidence that suggests that after the preparation of the draft in May, which contained words to the opposite effect, something had occurred which would have caused the draft to be amended on this point. Second, the forensic analysis of the transcript, performed on our behalf by an independent body, discloses that the typist had a great deal of difficulty in transcribing the tape, and not only with respect to page 7. The evidence is clear that whoever typed the transcript, whether it was Mr. Sexsmith's secretary, Mrs. Baker, or someone else, was not someone trained to transcribe recorded telephone conversations. It is easy to speculate how an error could have been made. The words "they are" in the sixth line of the portion quoted above could have been "their's are" — the analysis performed on our behalf shows that the typist had difficulty with the words "they are" in that line. Alternatively, the two words "wasn't an" where they appear in line seven could have been "was an". Whatever the error, we are convinced that one has been made because, without some such correction, it is clear that what Mr. Tassé is quoted as saying makes no sense.

C. POSTSCRIPT

129. We now examine one allegation and one factual situation that are related to each other in terms of certain facts and therefore must be considered together. The first is that before October 6, 1972, a federal Cabinet Minister urged that the A.P.L.Q. be destroyed, even by illegal means. Logically, perhaps, this allegation should be discussed as part of our report on Operation Bricole itself (Part VI, Chapter 9). However, as the second of these two

matters must be reported on in the present chapter, and the two are so intertwined, we have decided that they should both be reported on here. The second matter is a meeting which was held on September 10, 1973 (eleven months after Operation Bricole), the notes of which *might* on their face justify the inference that Ministers present were then made aware that the R.C.M.P. had engaged in a "break and entry" of the A.P.L.Q. office in October 1972. If that were so, of course, it would be very pertinent to the present chapter's examination of whether the R.C.M.P. reported Operation Bricole to the Solicitor General and officials of the government. As will be seen, we conclude that the allegation that before October 6, 1972, a federal Cabinet Minister urged that the A.P.L.Q. be destroyed, even by illegal means, is unfounded, and that, at the meeting of September 10, 1973, the R.C.M.P. did *not* disclose that it had engaged in a "break and entry".

- (i) An allegation that a Cabinet Minister urged before October 6, 1972 that the A.P.L.Q. be destroyed, even by illegal means.

130. We now examine an allegation concerning which we heard all testimony *in camera* because we considered that the lengthy investigation conducted by our counsel had already raised substantial doubt about the accuracy of the allegation, and we felt that it would be grossly unfair to those impugned by the allegation if, after the initial sensation the allegation would create, it proved unfounded. If our conclusion on the evidence were that the allegation was well-founded, the testimony could be read by all, beyond such detail as we might insert in our Report, and our reasons might be judged against the testimony as published.

131. We initiated this investigation after one of us, on February 8, 1980, during the course of reviewing another Security Service file at R.C.M.P. Headquarters, came across memoranda made in September 1977 of a meeting between an R.C.M.P. officer and a person whom we shall refer to herein as "the public servant", and of a further short meeting between them several days later.

132. The *in camera* testimony was heard on October 8 and 28, November 20 and December 4, 1980, and is found in Volumes C109, C112, C115 and C117.

133. In the first of these memoranda, the public servant was reported to have made a serious allegation to a senior officer of the Security Service on a social occasion in September 1977. As then reported by that officer, it was that he had in his possession some Unemployment Insurance Commission (U.I.C.) files relating to suspicions of fraud by members of the A.P.L.Q. against the U.I.C. The report of the conversation then stated that, according to the public servant, the files reflected a Cabinet meeting where no minutes were to be kept on the subject of conversation, and that three officials from the U.I.C. "were at a cabinet meeting with Mr. Starnes and Howard Draper". The report then continued (still referring to what the public servant said):

The point of discussion at the Cabinet meetings was the extensive frauds by groups like the APLQ. According to [the public servant], five Quebec Ministers were involved and he named Mr. Marchand, Marc Lalonde, Mr. Pelletier, Jean-Pierre Goyer and the Prime Minister. He said

that what had surfaced were the fraudulent employment lists these groups were drawing funds against. He said that from what he had read on these files, Mr. Lalonde is alleged to have told the Director General and Mr. Draper that he didn't care how things were handled, the groups must be destroyed, implying by any means even outside legal bounds. The way [the public servant] put it, it would appear that C/Supt. Don Cobb may be carrying the can in order to protect politicians like Mr. Lalonde.

134. When we discovered the existence of this allegation, by coming across it in a Security Service file in February 1980, we instructed counsel to investigate it thoroughly. During that investigation the public servant repeated his allegation in a statutory declaration. At the conclusion of the investigation we decided that the matter should be the subject of testimony, and we also decided that the testimony should be heard *in camera*.

135. We heard the testimony of the public servant. He has no personal knowledge of the matter. As he had by the time of his appearance retired from the public service, he no longer was in possession of any relevant documents. Neither he nor anyone else could produce any minutes or notes of any kind of such a meeting held before Operation Bricole was carried out on October 6-7, 1972. It will be noted that, on the face of what the public servant said the files disclosed, there was an evident inaccuracy in that at that time Mr. Lalonde was not a Minister nor even a Member of Parliament. However, that error alone would have been insignificant, if the rest of the report were correct. If the report were generally accurate, there was a documentary record of serious involvement by those Ministers said to have been present, in that, unless Mr. Lalonde's instructions were repudiated by them, they might be taken to have tacitly authorized even illegal action to disrupt the A.P.L.Q.

136. We are completely and unreservedly satisfied that there is no truth whatsoever to this allegation, for the following reasons:

- (a) In his testimony, the public servant gave the following crucial answer:

Q. Do you recall from your reading of the memorandum whether it attributed specific remarks to any individual person?

A. Yes. The notes indicated, what I took from the notes was that Marc Lalonde had indicated in very forceful and strong words that the police were to do what was ever necessary to obtain the necessary evidence and to break up this organization.

(Vol. C109, p. 14074.)

Earlier, in the statutory declaration which he gave us, he said, to the same effect:

The typed text of the notes of the meeting recorded that the R.C.M.P. members briefed the Cabinet members on the results of the investigation into U.I.C. frauds, which results were disclosed by the messages in the envelope. The typed text then recorded Mr. Lalonde as having told the R.C.M.P. members, in the most forceful terms, to take whatever steps were necessary in order to destroy the A.P.L.Q. and the other groups reportedly responsible for the frauds.

He testified that the memorandum was dated October 1972 (Vol. C109, p. 14073). He told us that he read the memorandum on two occasions. He stated that he had not told the senior R.C.M.P. officer that, according to the notes, Mr. Lalonde said he did not care how things were handled and that the groups including the A.P.L.Q. must be destroyed. He further told us that he did not tell the senior R.C.M.P. officer that the notes conveyed that Mr. Lalonde was implying that this should be done by any means, even outside legal bounds. According to him,

I only indicated to him [the senior RCMP officer] that there were names of Cabinet Ministers that had been briefed, and up to this point in time [September 1977] this information had not come forward, and I felt this was information that would be helpful to the police; that these Cabinet Ministers had received such a briefing.

(Vol. C109, pp. 14245-6.)

The testimony of the public servant is contrary to that of the R.C.M.P. officer and contrary to the contents of the memorandum the R.C.M.P. officer prepared in September 1977. We believe the R.C.M.P. officer's testimony and his memorandum to be the correct version of what the public servant said.

(b) The public servant, in the statutory declaration which he gave us in April 1980, almost six months before he testified, stated as follows:

8. I did not read the full text of the handwritten notes of the meeting. The typed text seemed to be a transcript of the handwritten notes. That typed text was about two and one half pages in length. I read all of that typed text while Mr. Williams was present.

However, when testifying he claimed that he read both the handwritten and the typed notes to compare them, sentence by sentence (Vol. C109, pp. 14126, 14155.)

(c) The public servant testified that a memorandum he wrote on August 11, 1977, to his Deputy Minister, that referred to a meeting attended by members of the U.I.C. with federal Quebec Ministers and R.C.M.P. members (but did not refer to anything in the nature of instructions to destroy the A.P.L.Q. or even give the date of the meeting) was written "approximately six or seven months" after representatives of our Commission of Inquiry first "came to our Department, to explain that they would like certain documents related to the inquiry that the Commission was making". As we were appointed in July 1977, and had no legal counsel or investigative staff who could make any inquiries until October 1977, it is clear that the public servant was completely in error on this point.

(d) The public servant testified that, when he spoke about this matter to the senior R.C.M.P. officer, he did so at the latter's office, and that it was the only matter discussed. The senior R.C.M.P. officer testified that this was only one of a number of matters the public servant discussed at a luncheon the two men had together at a restaurant. His contemporaneous memorandum of the luncheon is to the same effect. We unhesitatingly prefer the evidence of the R.C.M.P. officer to that of the public servant. The R.C.M.P. officer's memo-

randum, the entirety of which we have read, is a long account of the public servant's views on a number of matters, and could not, we feel certain, have been invented.

(e) Mr. Hugh Williams, who in 1977 was head of the Special Investigation Division of the Canada Employment and Immigration Commission (successor to the U.I.C.), denied that the files he gave the public servant in 1977 referred to a meeting in 1972. We have no reason to disbelieve Mr. Williams.

(f) There is an explanation which enables us to accept that the public servant's understanding of the content of the documents he had read is not completely faulty, and that he is simply mistaken as to important details. There was indeed a meeting of some Ministers concerning frauds against the U.I.C. across Canada, and the discussion included a reference to the A.P.L.Q. The Ministers were concerned that there be prosecutions of offenders. At the time of our hearings we had read handwritten notes, made, we believe, by an employee of the U.I.C., of a "Briefing to Cabinet" on September 10, 1973 (i.e. eleven months after the Bricole operation). The notes indicate that Mr. Lalonde — who by this time was Minister of National Health and Welfare — was present, and opposite his name, for some reason, the notes show "(P.M.)". The Chairman was shown, not as the Prime Minister, but as the Honourable Robert Andras. The notes show that the R.C.M.P. members present were Assistant Commissioner Draper, Assistant Commissioner Nadon and Inspector Jensen. The notes indicate that Assistant Commissioner Draper spoke of the A.P.L.Q. The notes state, opposite the name of Mr. Lalonde: "full scale investigation or intervention regardless will be good for the goal — offensive rather than defensive". Some months after our hearings into this matter had ended and we had been satisfied that the public servant's evidence was not credible, the Privy Council office advised us that it had discovered a "Memorandum for File" which had not been stored with normal Cabinet documents. With it had been discovered handwritten notes by a Cabinet secretary. Both documents refer to the same meeting on September 10, 1973, and record the presence of the same persons, as did the notes produced from U.I.C. files. The cumulative effect of this documentation satisfies us that there was a meeting on September 10, 1973, and that it was this meeting about which the public servant had read.

137. Of course it does not follow necessarily, from the fact that there was a meeting attended by Cabinet Ministers, R.C.M.P. officers and U.I.C. officials in September 1973, that there was no such meeting in October 1972. It was because the latter did not follow irresistibly from the former that we held our hearings. The result of hearing the public servant testify was that we do not accept his evidence as accurate, not merely because there was the meeting in 1973 which was so similar to that which he claimed occurred in October 1972, but also because of the considerable inconsistencies in his own testimony and statements. By the time his testimony was completed, we had concluded that the allegation he had made to the R.C.M.P. officer, which resulted in our counsel and ourselves conducting an exhaustive inquiry into the matter, was completely unfounded.

138. Nevertheless, in case some witness who was said by the public servant to have been recorded as having been present at the meeting supposedly held in 1972 might indeed support the public servant's allegation, we heard the testimony of Mr. Starnes, Mr. Draper, the most senior U.I.C. official said to have been present, the U.I.C. official said to have been the author of the memorandum, and the Honourable Marc Lalonde. Mr. Starnes says that he knows nothing of the allegation; and, of course, if the only meeting was that held in September 1973, Mr. Starnes would know nothing of that meeting as by then he had left the Security Service. Mr. Draper testified that he remembered no such meeting in 1972 but that he did attend the meeting in 1973 and at that time discussed the A.P.L.Q. The U.I.C. official, Jean-Marc Legros, was said by the public servant to have been at the meeting in 1972 as Director of the Special Investigation Division of the U.I.C. He told us that he was given that title in September 1972, but that the Division was not organized until January or February 1973 and he was not really involved with the Division until then. Consequently, he says, it was impossible for him to have been at a meeting on the subject of frauds on the U.I.C. in September or October 1972. He does remember the meeting of September 1973. The man who the public servant said had been the author of the memorandum concerning the 1972 meeting was Robert Bambrick. He denies ever having been present at a meeting of Cabinet Ministers. He does recall Mr. Legros telling him of such a meeting in 1973, the purpose of which was to make the Ministers aware of the use of U.I.C. funds by certain subversive or activist groups. Mr. Lalonde told us that he certainly was at no meeting between the beginning of September 1972 and the end of November 1972 attended by the Prime Minister and representatives of the U.I.C. and R.C.M.P. concerning the A.P.L.Q. He also says that he has no memory of any such meeting before September 1972.

139. We also heard testimony by Mr. John G. Palmer, who has been a security officer with the Canada Employment and Immigration Commission since 1974. He told us that some time in the middle of 1977 the public servant told him that he had come across information that he, Mr. Palmer, assumed referred to a time preceding the A.P.L.Q. "event" in 1972, because the public servant told him that "the Honourable Marc Lalonde" had said, in relation to the A.P.L.Q. "Go after the (obscenity)". The public servant's former secretary also testified that in August 1977 the public servant told her that there had been a meeting of U.I.C. officials, R.C.M.P. and Ministers and that there had been a decision to follow through with a break-in at the A.P.L.Q. There is little doubt, then, that the public servant was fundamentally consistent in 1977 and 1980. That does not mean that his understanding of what he had read was consistently correct. Indeed, it should be noted that Mr. Palmer testified that the public servant told him that Mr. Dare had been one of the participants in the meeting. This is quite inconsistent with the public servant's testimony that, according to the document he read, Mr. Starnes had been present. Further, we note that Mr. Dare did not join the R.C.M.P. Security Service until 1973, and there is no reason known to us why he would have attended a meeting on that subject in 1972.

140. It was not until we were well into our hearings into this allegation that we learned that the essentials of this allegation had been published in an article in the *Sunday Sun* (Toronto) on October 7, 1979. We had believed that the allegation was not in the public domain, yet we had decided nonetheless to investigate it fully. The result of our investigation is that we find that the allegation is unfounded. We have reached that conclusion not so much by relying upon the evidence of such persons as Mr. Lalonde and Mr. Starnes, who might be thought to have reason to deny the allegation even if it were true, as by concluding that the evidence of the public servant is not to be accepted on the grounds we have stated.

141. Finally, we wish to record our regret that the R.C.M.P. did not bring this allegation to our attention. The allegation was known at a high level from September 1977. We realize that it was not taken seriously. Nevertheless, it should have been made known to us. If it had been, we could have investigated it by asking the public servant, who did not leave his position until 1979, to produce the document which in September 1977 he had claimed to have in his possession.

(ii) Were Ministers advised on September 10, 1973, that the R.C.M.P. had participated in a break-in at the A.P.L.Q. office?

142. In March 1981 the Privy Council Office advised us that it had discovered minutes of the meeting held on September 10, 1973, to which reference has been made in the previous section of this chapter, as well as "ancillary documents". The "ancillary documents" were, we discovered, handwritten notes by a member of the staff of the Privy Council Office at that meeting. We found that these notes recorded that Deputy Commissioner Nadon, who was then Deputy Commissioner (Criminal Operations), spoke of the R.C.M.P.'s investigations of frauds against the Unemployment Insurance Commission. The notes then recorded the following:

Our criml fraud squad Mtl bring to early concln: will exam all evide under Crim Code and UIC act: some areas diffc: need records to carry out: some not available before Oct 72: (break & entry)

— most info from delic sources:

— cannot use for ct purps: must go out (in?) invest, maybe search cos, indivl will be some publicity

We interpret this as saying:

Our commercial fraud squad Montreal bring to early conclusion: will examine all evidence under Criminal Code and Unemployment Insurance Commission Act : some areas difficult: need records to carry out: some not available before October 1972: (break and entry)

— most information from delicate sources:

— cannot use for court purposes: must go out (in?) [and] investigate maybe search companies [and] individuals will be some publicity

143. When we read this we realized that the notes might be construed as evidence that on September 10, 1973, Deputy Commissioner Nadon disclosed

to those at the meeting that in October 1972 the R.C.M.P. had taken the A.P.L.Q.'s records in a break and enter. We thereupon immediately instructed our counsel to review once more the files of the R.C.M.P., both on the criminal investigations and Security Service sides, to determine whether there was any documentation that might assist us in determining whether Mr. Nadon had made such a disclosure. If necessary we were prepared to call witnesses once again, even though Mr. Nadon had already testified that in 1973 he was unaware of Operation Bricole.

144. Upon his further review of R.C.M.P. files, our counsel did find two documents that support the conclusion that the C.I.B., in the weeks preceding the meeting of September 10, 1973, remained unaware that the R.C.M.P. had been involved in the break-in at the offices of the A.P.L.Q. Thus, on August 24, 1973, "C" Division in Montreal, in a message to Headquarters in Ottawa, advised of the creation of a task force consisting of R.C.M.P. and U.I.C. personnel, and then continued:

Original information received from H.Q. gave us seven names of persons who were receiving benefits and who apparently were working at APLQ. We are restricted in historical research to no further back than the 7 Oct 72 the reason for this being that in the evening of the 6 to 7 Oct 72 a break-in occurred at the offices of the APLQ at which time all records and documents were allegedly stolen. Proof in court will require documentary evidence from APLQ and therefore prior to above date it is not available.

The message then gave information about seven individuals, based on U.I.C. data, and discussed the manner in which investigation might be undertaken, including searches at the offices of the A.P.L.Q. and of individuals. The second document consists of a typewritten statement entitled "Agence de Presse Libre du Québec (APLQ)". This quite obviously was the presentation made by Mr. Nadon to the meeting of September 10, 1973. This is demonstrated by its opening language and by the remarkable similarity between its contents and the notes made by the Privy Council Office staff member at the meeting. The document begins as follows:

As a representative of the Criminal Operations side of the Royal Canadian Mounted Police, I wish to outline briefly for your benefit the nature of this Force's involvement in the investigation of Agence de Presse Libre du Québec, and its employees as it relates to certain irregularities associated with the obtention of U.I.C. benefits, the present standing of the investigation and our contemplated future course of action.

Our involvement was dictated by an official request for investigative assistance, dated July 19th, 1973, from the Special Investigation Committee, of the Unemployment Insurance Commission.

It then gave information about the same seven individuals and about investigations under way concerning certain Local Initiative Projects in the Province of Quebec believed unrelated to the A.P.L.Q. The briefing document's striking similarity to the P.C.O. staff member's notes, quoted early, will be observed in the following excerpt:

After consultations with our colleagues in the Unemployment Insurance Commission, we have established a "task force" in Montreal to cope

with this specific U.I.C. investigation. This force is composed of representatives from U.I.C. regional office in Montreal and members of our Commercial Fraud Section in that city. Objective, of course, is to work in unison with a view to bringing the investigation to an early successful conclusion. All transactions and allegations will be examined carefully both in terms of the provisions of the Criminal Code and U.I.C. Act.

I must clarify that our enquiry will be restricted, to a degree historically, in that the offices of A.P.L.Q. suffered a break-in during the night of October 6/7, 1972, resulting in the loss of accounting records. Documentary evidence is a must to establish any fraudulent obtention and we will therefore be restricted to the period following October 6th.

At this moment we are substantiating certain basic information in order to gain appropriate and adequate grounds for the obtention of search warrants under the Criminal Code. As you appreciate we cannot disclose our sources because of their delicate nature. We must support this evidence and information through other means. The acquisition of A.P.L.Q. accounting records is a must if we are to confirm or deny the allegations made.

145. From the contents of these documents it is plain to us that what was said by the R.C.M.P. at the meeting of September 10, 1973 was not in reference to the participation of the R.C.M.P. in the break-in in 1972. It was clearly in reference to a break-in which the C.I.B. and Mr. Nadon assumed was carried out by persons who were not members of the R.C.M.P. Because this is the inescapable conclusion on the basis of the documentation, we have decided that no testimony is required.

Comments of Commissioner Gilbert

146. I did not participate in the examination of the matters dealt with in the Postscript nor in the conclusions reached with respect to them. My reasons for not doing so are set out in a Record of Decision of the Commissioners dated September 9, 1980, which reads:

Commissioner Gilbert advised his fellow Commissioners that after examining the summaries of the investigations carried out by Commission Counsel in connection with the allegations made by [name of the public servant] respecting Operation Bricole, he had decided that he would not participate further in deliberations or hearings or decisions of the Commission with respect to the matter. He said that he had arrived at this decision because of his friendship for Marc Lalonde whose conduct would be subject to examination during the course of further Commission investigations and hearings on the matter. The Chairman and Commissioner Rickerd advised Commissioner Gilbert that they understood the reasons for his decision and agreed with that decision. It was agreed that the Chairman would announce Commissioner Gilbert's decision at the first formal proceedings relating to the subject.

CHAPTER 5

AN ALLEGATION THAT AN ATTEMPT WAS MADE TO PREVENT FACTS FROM BEING DISCLOSED TO THE SOLICITOR GENERAL AND TO PERSUADE A MEMBER TO BE UNTRUTHFUL

INTRODUCTION

1. In this chapter we examine two events, separated by five months and distinct as to the issues they raise, yet related in terms of subject matter. The first consists of the circumstances in which Staff Sergeant Gilbert Albert, of the Security Service in Montreal, had conversations with former Staff Sergeant Donald R. McCleery on May 31 and June 1, 1977. The issues are whether Mr. Albert attempted on June 1 to persuade Mr. McCleery not to divulge facts to the Solicitor General's representative, whether Superintendent Henri Robichaud ordered Mr. Albert to do so, and whether Superintendent Robichaud received instructions from any of his superiors to do so. An incidental matter in regard to the meetings of May 31 and June 1 is whether Mr. Albert made written reports of those meetings earlier than the written statement he gave to Superintendent Nowlan's internal investigation on June 16, 1977.

2. The second event occurred on November 8, 1977, when Superintendent Archibald Barr, an Officer in Charge of the R.C.M.P.'s Task Force which was concerned with liaison between the R.C.M.P. and our Commission of Inquiry, met Staff Sergeant Albert in Ottawa. In regard to this occurrence, the first issue is whether Superintendent Barr ordered or asked Staff Sergeant Albert to change an account, which he had given in a statement in an internal inquiry in June 1977, of what Superintendent Robichaud had expected him to do vis-à-vis Mr. McCleery on June 1. The second issue is whether, if he did not order or ask Staff Sergeant Albert to do so, he nevertheless used words which, led Staff Sergeant Albert to believe that it would be best for him to do so, and whether that was intended by Superintendent Barr. The third issue is whether, if Superintendent Barr did order or ask Staff Sergeant Albert to do so, one or more of Superintendent Barr's superiors ordered or suggested to Superintendent Barr that he should try to get Staff Sergeant Albert to change his story. The fourth issue is whether Superintendent Barr carried out the expectations of the lawyers for the Government of Canada and this Commission who two days earlier had identified the facts, as stated in Mr. Albert's written statement of June 16, 1977, that they thought required clarification.

3. Public hearings were held by us concerning these matters on June 25 and 27, July 16 and September 8, 1980. That evidence appears in Vols. 189, 190, 191, 194 and 198. In response to notices given pursuant to section 13 of the Inquiries Act, representations by and on behalf of some of the persons involved, including further testimony by some of them, were heard by us in private on March 11, April 1 and 15, 1981 (Vols. C120, C128 and C131).

STATEMENT OF FACTS

4. On May 31, 1977, Staff Sergeant Gilbert Albert was a member of the Security Service, stationed in Montreal. He had been a member of the R.C.M.P. for 24 years. His immediate superior at that time was Inspector Ferraris. Superintendent Henri Robichaud was the Acting Area Commander of the Quebec Area Command of the Security Service.

5. Mr. McCleery had been dismissed from the R.C.M.P. in 1973, after 25 years of service. The stated reason for his dismissal was his failure to obey an order that he not associate socially with a particular individual who was a subject of concern to the R.C.M.P. Mr. Robichaud told us that some time after Mr. McCleery's dismissal, and many months before May 1977, on the instructions of the Commanding Officer of "C" Division of the R.C.M.P. he, Robichaud, had instructed all members of the Security Service in Montreal that they were not to associate with Mr. McCleery and if they did meet with Mr. McCleery and any questions were asked they were to report it. He said he does not remember whether the requirement was to report in writing (Vol. 190, pp. 27931-7). Mr. Albert told us that he had received those instructions, which were a formal order, and the members were told in those instructions that if they had a chance encounter or an arranged meeting with Mr. McCleery they were to report to their immediate superior or another superior officer (Vol. 191, pp. 28187-9). He said he had been advised even before that general meeting that he was forbidden to have any association with Mr. McCleery. Mr. Albert testified that after Mr. McCleery's dismissal he saw Mr. McCleery a maximum of 10 times and submitted reports in the majority of cases (Vol. 190, p. 28191). Messrs. McCleery and Albert were friends, and had worked together in Montreal from 1954 until Mr. McCleery's dismissal, except for two occasions when Mr. Albert was posted outside Montreal (Vol. 189, pp. 27723-4). Mr. Albert retired from the R.C.M.P. on July 4, 1978, and at the time of giving his testimony was an associate of Mr. McCleery in a private security agency.

May 31, 1977

6. On May 31, 1977, Mr. Robichaud learned from a source of the Security Service that Mr. McCleery intended to meet with the Solicitor General (Ex. M-112 for identification). Mr. Robichaud testified that he then asked Mr. Albert to arrange a meeting with Mr. McCleery but that this was not an order and that Mr. Albert could have declined but did not do so. Mr. Robichaud said that such a meeting would be attended by Mr. Albert in the exercise of his duty (Vol. 190, pp. 27938-9; Vol. 191, p. 28184). Mr. Albert testified that Mr.

Robichaud told him that he, Robichaud, had been informed by a source that Mr. McCleery intended to reveal to the Solicitor General certain things committed by the R.C.M.P., and that it was in the interest of the Security Service to get more information on that. Mr. Albert told us that he does not believe that Mr. Robichaud told him that there was a meeting planned with the Solicitor General (Vol. 191, pp. 28185-6). Mr. Robichaud testified that he does not believe that he informed Mr. Albert about Mr. McCleery planning to go to see the Solicitor General. In a memorandum prepared later that same day, May 31, 1977, Mr. Robichaud stated "...Albert was not aware of the information that McCleery was planning to see someone from the Solicitor General's office" (Ex. M-112 for identification).

7. Mr. Albert arranged a meeting with Mr. McCleery for lunch on May 31, 1977, and advised Mr. Robichaud accordingly (Vol. 191, p. 28187). As arranged, Mr. Albert met Mr. McCleery that day. Mr. Albert testified that he had not seen Mr. McCleery for a long time prior to May 31, 1977, because of the order not to see him (Vol. 198, p. 29221). He told us that the purpose of the meeting was to determine Mr. McCleery's intentions in view of his impending meeting with the Solicitor General. He said that it was Mr. McCleery who told him that he was going to see the Solicitor General and that he, McCleery, was going to advise the Solicitor General that he, the Solicitor General, was being lied to, as in Mr. McCleery's own case (Vol. 191, pp. 28192-3). He said that it was not Mr. McCleery's intention to divulge matters to the public, but only to the office of the Solicitor General (Vol. 191, pp. 28217-8). Mr. Albert told us that at the meeting he and Mr. McCleery talked about certain operations and that although Mr. McCleery did not say so he, Albert, concluded that Mr. McCleery intended to mention those operations to the Solicitor General or to the person whom he was going to meet (Vol. 191, p. 28194). Mr. Robichaud testified that after the meeting Mr. Albert reported to him verbally, that he, Robichaud, was satisfied with the verbal report, and, that Mr. Albert did not prepare a written report, although he acknowledged that the rule was to report if "they [the ex-members] asked for something" (Vol. 190, pp. 27932, 27937, 27942-3). According to Mr. Albert, he reported to Mr. Robichaud, and Mr. Albert believes that he submitted a written report which he believes he would have addressed to Mr. Ferraris (Vol. 191, pp. 28211, 28217). Mr. Robichaud could not recall whether reports about meetings with the ex-members were to be in writing (Vol. 190, p. 27937), but Mr. Albert testified that the rule was to report in writing (Vol. 191, p. 28228). Mr. Albert also said that he considered that in meeting with Mr. McCleery he was on duty, under orders (Vol. 191, p. 28213).

8. Mr. Robichaud testified that he arranged a meeting with Assistant Commissioner Sexsmith, the Deputy Director General (Operations) in Ottawa for approximately 7:00 p.m. on May 31, solely for the purpose of discussing Mr. Albert's meeting with Mr. McCleery. He travelled to Ottawa for the meeting and met with Mr. Sexsmith that evening as arranged (Vol. 190, pp. 27944-5). According to Mr. Sexsmith, it had been some time prior to May 31, 1977 that Mr. Robichaud first indicated to him that Mr. McCleery and Mr. Brunet, or one of them, were preparing to make allegations. Mr. Sexsmith said that he

had previous knowledge that Messrs. McCleery and Brunet were attempting to see the Solicitor General (Vol. 190, p. 28048). Mr. Sexsmith also testified that he assumes that Mr. McCleery had knowledge of such things as Cathedral (mail check operations) and surreptitious entries, and that he had a great deal of knowledge about operations of the Security Service generally. Mr. Sexsmith told us that he was concerned that Mr. McCleery would disclose such matters to the Solicitor General.

Q. . . are you stating today openly and unequivocally that the Force had meant never to let the Solicitor General, whoever he was, know of practices or operations that were not authorized or provided for by law?

A. Yes, sir.

He added:

I would have thought that after all this time your Commission has been sitting, it would have become rather obvious that the Security Service kept certain operational things from the Solicitor General.

He told us that the reason he did not want the Solicitor General to become aware of the practices was because "it would put the Solicitor General in an impossible situation". He said that "as a Minister of the Crown" the Solicitor General could not "live with knowledge which indicated that an organization that he [the Solicitor General] was primarily responsible for was committing illegalities or improprieties or wrongdoings" (Vol. 190, pp. 28051, 28053-4, 28058, 28065).

9. Mr. Robichaud said that at the May 31 meeting with Mr. Sexsmith he, Robichaud, related to Mr. Sexsmith the report that Mr. Albert had given to him verbally (Vol. 190, p. 27945). According to Mr. Robichaud, Superintendent Nowlan was at the meeting, and those present concluded that the Security Service was in difficulty because of the nature of the allegations Mr. McCleery intended to make. Mr. Robichaud testified that he volunteered to get any other details or information he could from Mr. McCleery and that he indicated that he would ask Mr. Albert to see Mr. McCleery again and get more information. He said that Mr. Sexsmith and Mr. Nowlan did not veto that suggestion. He later told us that he does not recall specifically that he mentioned to Mr. Sexsmith and Mr. Nowlan that he would ask Mr. Albert to see Mr. McCleery again (Vol. 190, pp. 27949-60). However, in Mr. Barr's memorandum of November 8, 1977, he recorded that Mr. Robichaud, in discussing the matter with him that day, told him that, after receiving Mr. Albert's report on May 31 of his meeting that day with Mr. McCleery, Mr. Robichaud

came to Ottawa that evening and spoke with the D.D.G. (Ops) [Mr. Sexsmith] and it was agreed that on the strength of information obtained up to that point that a second meeting should take place for the purpose of further clarifying these allegations and if possible determining McCleery's course of action. Supt. Robichaud said that it was never considered nor decided that we should in any way attempt to influence McCleery's course of action but that the purpose of the meetings was simply to gather information.

10. Mr. Robichaud told us that he was concerned that Mr. McCleery might take something to someone else besides the Solicitor General, and that his

concern on May 31, 1977, was that Mr. McCleery would make public the allegations that he was recounting to Mr. Albert as well as other operational matters he, McCleery, was aware of (Vol. 191, p. 28107). Mr. Robichaud acknowledged that from the time of Mr. McCleery's discharge in December 1973 until May 1977 Mr. McCleery had not, to his knowledge, disclosed any matters with respect to operations which could be compromising to the R.C.M.P. or the Security Service. He said that nothing concrete had happened during that time to justify the fear that Mr. McCleery would leak information to the news media such as that which he now intended to communicate to the Solicitor General (Vol. 191, pp. 28109, 28147-8; Vol. 190, p. 28026). Mr. Robichaud told us, that prior to Mr. McCleery's leaving the Security Service, Mr. McCleery had told him that he was going to destroy the Security Service. He said it was not a matter of concern to him to know what Mr. McCleery was going to tell the Solicitor General, but on the other hand, puzzlingly, Mr. Robichaud stated that he was interested in knowing what operations Mr. McCleery was going to bring up or in what form (Vol. 190, p. 28034).

11. Mr. Robichaud said that after the meeting with Messrs. Sexsmith and Nowlan he dictated a memorandum to file (M-112 for identification). He said he does not recall reading the memorandum and that he returned to Montreal without having a copy of it (Vol. 190, pp. 27946-7). He told us that it was his impression that the results of the investigation of everything in his memorandum would be brought to the attention of the Solicitor General if it were well founded. He also testified that he never showed that memorandum to Mr. Albert and that he does not recollect conveying to Mr. Albert the details of that memorandum to enable Mr. Albert to cross-check the accuracy of it (Vol. 191, pp. 28167, 28178).

12. Mr. Sexsmith testified, in regard to the meeting with Mr. Robichaud on May 31, that he cannot recall giving any instructions to Mr. Robichaud on how to handle the matter. He told us that he does not recall any specific discussion about Mr. Albert getting in touch with Mr. McCleery to try to get more information or specifically telling Mr. Robichaud that they would be interested in having more information. He agreed that he would "assume that Mr. Albert would be encouraged by Mr. Robichaud to pursue the matter and attempt to complete the information or gather more information" and that that would all be "in the line of duty". Mr. Sexsmith does not "think [he] would have to draw any pictures for Robichaud..." (Vol. 190, pp. 28084-7). However, a different version is reported by Mr. Barr in his memorandum dated November 8, 1977 (Ex. M-159). There he stated as follows:

The D.D.G. (Ops) [Mr. Sexsmith], when asked for his recollections of his instructions to Supt. Robichaud on the evening of May 31st and specifically in relation to the second meeting with McCleery, stated that this meeting was agreed upon to solicit additional information on McCleery's allegations.

June 1, 1977

13. Mr. Robichaud returned to Montreal on the evening of May 31, 1977. On June 1, 1977, Mr. Albert was called to Mr. Robichaud's office and was, Mr.

Albert testified, asked to try to see Mr. McCleery again and obtain more information on Mr. McCleery's intentions about going to see the Solicitor General and at the same time to try to dissuade Mr. McCleery from divulging the facts that he knew. Mr. Albert acknowledged to us that it was also in his own personal interest not to have the facts divulged because he was implicated in certain of the operations of which Mr. McCleery knew. Mr. Albert testified that in the discussion he had with Mr. Robichaud the point was made that it was not only the R.C.M.P. itself, but also other individual members of the R.C.M.P., who would be involved. He told us that there was again a discussion that he should try to dissuade Mr. McCleery from communicating information to the Solicitor General; that the reason that he was to see Mr. McCleery the second time was to try to convince him not to divulge things that he knew to the Solicitor General; and, that he has no doubt that that was the reason for his meeting with Mr. Robichaud (Vol. 191, pp. 28218-21). According to Mr. Albert, at the time of his meeting with Mr. Robichaud he did not know that the latter had gone to Headquarters in Ottawa the previous evening to report on the first conversation Mr. Albert had had with Mr. McCleery. Later, Mr. Albert told us that when Mr. Robichaud called him into his office on June 1, 1977, the reason that he was to go back to see Mr. McCleery was not to obtain further or additional information because they had already obtained the information on May 31, 1977. He said that his recollection is that he was not directly ordered as such — that is, not given a written order — to persuade Mr. McCleery not to divulge the information to the Solicitor General, but as he understood it that was understood by himself and Mr. Robichaud to be the reason for his going to see Mr. McCleery a second time (Vol. 198, pp. 29222-4). Mr. Albert also told us later that he personally had nothing to gain or lose in trying to convince Mr. McCleery not to talk to the Solicitor General (Vol. 198, p. 29231).

14. We turn now to Mr. Robichaud's account of what occurred at the meeting between himself and Mr. Albert on June 1: He asked Mr. Albert to meet again with Mr. McCleery. He imagines that they had a discussion as to what information Mr. Albert should seek but he cannot recollect it. To the best of his recollection he asked Mr. Albert to find out if there were any other incidents that Mr. McCleery was going to expose but he did not give Mr. Albert "an indication that he was to talk to Mr. McCleery in such a way as to try to dissuade him from seeing the Minister or representatives" of the Minister. He does not recall having instructed Mr. Albert, or having indicated in any way to him, that he should attempt to dissuade Mr. McCleery from talking to representatives of the Solicitor General (Vol. 190, pp. 27961-2). (Later, more positively, Mr. Robichaud said that he "most certainly did not instruct him to prevent McCleery from going to the Minister", p. 28022.) Whatever information he obtained through sending Mr. Albert to talk to Mr. McCleery he intended to give to Mr. Sexsmith, but he had no idea what Mr. Sexsmith would do with it (Vol. 190, pp. 28022-36). In meeting with Mr. McCleery on June 1, Mr. Albert was acting in the line of duty. In order to have the meetings of May 31, and June 1, with Mr. McCleery, Mr. Albert had to be authorized by him to attend such meetings (Vol. 190, pp. 27954, 27961-2, 28022).

15. On June 1, Mr. Albert phoned Mr. McCleery and arranged a tennis match for that day, and they accordingly played the tennis match and had lunch together. Mr. Albert recorded his expenses for the tennis match and the lunch in his diary and thinks that he must have been reimbursed by the Security Service (Vol. 191, pp. 28222-3). At that meeting of June 1, 1977, he told us, he tried to convince Mr. McCleery not to go to Ottawa. He testified that he has no precise recollection whether the incidents mentioned the previous day were discussed again but they may have been. He told us he would very much have liked to have succeeded in convincing Mr. McCleery not to go to see the Solicitor General and that following the meeting he wrote in his diary "meeting not too encouraging" (Vol. 191, pp. 28224-5). Mr. Albert testified that at the first meeting, on May 31, the purpose had been to try to find out what revelations Mr. McCleery intended to make to the Solicitor General or his officials, and his intention at the June 1 meeting was to dissuade Mr. McCleery (Vol. 191, p. 28280).

16. Mr. McCleery testified that at the June 1 meeting with Mr. Albert there is no doubt he discussed his proposed visit to the Solicitor General's office, and that Mr. Albert was probably trying to dissuade him from going. However, Mr. McCleery noted that Mr. Albert had been doing that ever since he, McCleery, had been discharged. He told us that every time he tried to take his case to Federal Court, Mr. Albert would ask him why he wanted to do that because everybody knew that Mr. McCleery had not done anything. According to Mr. McCleery, Mr. Albert's recurring theme was "What do you want to push this thing for?", and the same theme was present at the June 1 meeting. At the meetings of May 31 and June 1 Mr. McCleery did not have the impression that Mr. Albert was pressing him to drop his going to Ottawa any more than he always did (Vol. 189, pp. 27729-32). Mr. McCleery stated that he does not recall telling Mr. Albert at those meetings examples of things that he might possibly use to substantiate his concern about the Minister being lied to. He told us that he does recall reminiscing at lunch with Mr. Albert and laughing about the A.P.L.Q. being an isolated case, and that each of them was recalling things that he knew about matters about which no one [else] knew anything (Vol. 189, pp. 27734-6). He testified that Mr. Albert did not tell him not to go and talk to Mr. Tassé or not to go and talk to someone in Ottawa, and that Mr. Albert's position was just generally "drop your — trying to get reinstated". According to Mr. McCleery, Mr. Albert did not say that like an official representative of the Force, and he always presumed that Mr. Albert was speaking on his own behalf (Vol. 189, pp. 27788-9).

17. Mr. Sexsmith testified that the Security Service did not mean to prevent Mr. McCleery from seeing the Solicitor General and from telling him whatever he was going to tell him. Mr. Sexsmith stated that he was aware that Mr. Albert was personally concerned about what Mr. McCleery was going to do but that he is not aware of any efforts by anybody after May 31, 1977, to change Mr. McCleery's direction (Vol. 190, pp. 28055, 28090). He told us that he does not think that he "was ever under any illusion that [Mr. McCleery] would not pursue his stated aim" of meeting the Minister (Vol. 190, p. 28091).

Reports by Mr. Albert

18. Mr. Albert testified that he is positive that he had made a written statement to Mr. Robichaud in relation to the meetings of May 31 and June 1 (Vol. 190, p. 27917). He also said that he made a written report which he believes he would have addressed to Mr. Ferraris (Vol. 191, p. 28217). He told us that he does not think that these meetings were exceptions to what he understood was the rule requiring written reports of such meetings (Vol. 191, p. 28228).

19. Mr. Robichaud testified that he presumes that Mr. Albert reported (verbally) to him after the June 1 meeting and that he imagines that he conveyed the information received to Ottawa and the fact that Mr. Albert had had a second meeting with Mr. McCleery (Vol. 190, pp. 27978-80). He told us that he did not receive a written report from Mr. Albert with respect to the June 1 meeting, nor a report at a later date of the May 31 meeting, nor did he receive a memorandum from Mr. Albert relating to his meetings with Mr. McCleery. He said it was the usual practice that when someone was sent out on a mission he would report in writing and file some information, but that he may have told Mr. Albert not to bother to file a written report because he, Robichaud, had all the facts. He said, however, that he does not recollect the line of discussion. He said he would be surprised if Mr. Albert had made a written report to some other officer without advising him and that he is not aware of any other written report. We have not seen any written report by Mr. Albert; the R.C.M.P. have advised us that they have not found any such reports.

20. At the beginning of June Superintendent Nowlan was instructed by Commissioner Nadon to conduct an internal investigation into the allegations being made by Mr. McCleery. In the course of this investigation, he called in Mr. Albert on June 16. Mr. Albert testified that at Mr. Nowlan's request he prepared a written report concerning his meetings with Mr. McCleery. He said he retained a copy of that report (Vol. 191, pp. 28233-6; Ex. M-158). He said that he believes that when he made the June 16 report he referred to the two reports which he asserts he had earlier given in writing. He further said that his memory may be wrong but he believes when he made the June 16 report he was aided by two reports that he had already made (Vol. 191, pp. 28238-9). In the statement he gave Mr. Nowlan, Mr. Albert stated as follows:

5. My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on Jules Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against Terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind.

November 8, 1977

21. Supt. Barr joined the R.C.M.P. in 1953 and has served in the Security Service since 1955. Upon the creation of this Commission of Inquiry in July

1977, he was appointed to head the Security Service component of the R.C.M.P. Task Force set up to liaise with us and our staff. That Task Force also had a C.I.B. component. The Co-ordinator of the Task Force in 1977 was Assistant Commissioner Quintal who, in that position, represented the Commissioner's office. Superintendent Barr served as Head of the Security Service Task Force until November 1978.

22. Mr. Barr testified that on November 6, 1977, he was called to a meeting at R.C.M.P. Headquarters at which those present were Mr. Quintal, Superintendent D.K. Wilson (also of the Task Force), and Mr. Nuss and Mr. Lutfy (government counsel) and Mr. Howard (Chief counsel for the Commission). Mr. Barr told us that it was at that meeting that he first directed his attention to Mr. Albert's statement of June 16, 1977 (Ex. M-158), which had formed part of the "Quintal-Nowlan Report", produced during the summer as a result of the internal investigation. At the meeting concern was raised, probably by Mr. Nuss or perhaps by Mr. Lutfy, particularly about the contents of paragraph 5 of the statement (quoted above). The concern that was expressed, according to Mr. Barr, was that, if paragraph 5 remained as it was, it implied an obstruction of justice in the spring of 1977 (Vol. 194, pp. 28497-9). Mr. Barr told us that the part of the paragraph especially singled out as being of concern was "... the part that suggests that the reason for this meeting of which Supt. Robichaud was aware was to convince Mr. McCleery not to pursue his intention to divulge whatever he knew". He said that it was agreed that "we would approach the individuals involved and determine whether or not the reading of that paragraph as it came through was the way it appeared to be" (Vol. 194, p. 28501). He said he came away from the November 6 meeting with a consensus as to what had to be done and it was then necessary to confirm that through the Director General of the Security Service, Mr. Dare. Mr. Barr testified that he was then given instructions to approach the individuals involved and solicit their comments and to report on it, and that he probably received those instructions as a result of a discussion between Mr. Quintal and Mr. Dare, based on his briefing of Mr. Dare as to what the issue was. However, he is not sure what discussions Mr. Dare had with either Mr. Quintal or the Commissioner's office, if at all. He told us that he thought his instructions came from Mr. Dare (Vol. 194, pp. 28503-7).

23. The lawyers who were present at the meeting of November 6 have agreed on the following statement:

On November 1st, 1977, Joseph R. Nuss, Q.C. and Allan Lutfy, both counsel to the Solicitor General, in the presence of then Assistant Commissioner Raymond Quintal, had seen, among other documents, the document which is now Exhibit M-158.

On November 5, 1977, Messrs. Nuss and Lutfy, when they were going through the Quintal-Nowlan Report at RCMP Headquarters in Ottawa, noted that Tab 46 (now Exhibit M-158) contained the following text:

"My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on Jules Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery

not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind."

Messrs. Nuss and Lutfy became interested in that text since it seemed to indicate a possible attempt a) to prevent the representative of the Solicitor General from learning certain allegations and b) to persuade McCleery not to divulge criminal acts. They drew the attention of Assistant Commissioner R. Quintal to this document on the same day and indicated that they intended to raise this question with J.F. Howard, Q.C., Chief Counsel to the Commission.

This was done at a meeting held on the next day, November 6, which was attended by J.R. Nuss, Q.C., A. Lutfy, J.F. Howard, Q.C., Assistant Commissioner R. Quintal, Superintendent D.K. Wilson and Superintendent A.M. Barr.

During the discussion, the RCMP expressed a desire to clarify this question through an interview with Staff Sergeant J.L.G. Albert and Superintendent H. Robichaud. J.F. Howard, Q.C. accepted this suggestion provided that the result be communicated to him. J.R. Nuss, Q.C. and A. Lutfy agreed to this manner of proceeding.

At no time during the discussion of November 5 between J.R. Nuss, Q.C., A. Lutfy and Assistant Commissioner R. Quintal, nor during the meeting of November 6, was there any question of other declarations or reports by or from Albert other than M-158.

(Ex. UC-84.)

24. Mr. Barr explained to us how he viewed the task he carried away from the meeting of November 6, as follows. He was given the responsibility of interviewing three people about a paragraph in a single statement and seeking clarification of that paragraph, and that this is what he did (Vol. 194, p. 28545). His notes with respect to that meeting state "Annex 46, paragraph 5, check who knew about approach to McCleery", and written beside it is "okay" and underneath entered later is "memo written 8-11". The memo referred to is his memorandum of November 8, 1977 (Ex. M-159; Vol. 194, p. 28568). As he recalls it "the approach to be followed from the 6th of November was (a) check who knew about the approach to McCleery, but also that the responsibility of interviewing these people would be left to us in the Task Force as opposed to establishing an investigation" (Vol. 194, p. 28569). It seemed to him, knowing how the system operates, and having experienced it in other quarters, that a discussion would have taken place between himself and Mr. Quintal to the effect that there was a problem and how they were to deal with it; that the two options were to conduct a formal investigation which was liable to get them nowhere or to try the route that they did which was for the Task Force to get the information by talking to the Security Service people (Vol. 194, pp. 28625-6). It had been agreed upon as policy that the Task Force were not investigators, they were researchers and that the reason for that was that, while the Task Force were doing their utmost to uncover the material that related to the issues the Commission would look at, it was clear to them that if

they were seen by members of the Security Service as investigators or an inquisitorial body people would simply not talk to them (Vol. 194, p. 28502). He was not acting as an investigator. The information could have provided the basis for an investigation had it been decided to do so (Vol. 194, p. 28627). The Task Force were under very firm instructions that if, in any discussions with anyone in the course of their research, they came across anything that had the slightest hint of criminality they were to cease their discussions and their research and turn the matter over to Mr. Quintal, who would then order an investigator to go in and take a statement. As he understood his assignment, it was to get the comments of the individuals involved in the framework of the research approach, putting down comments as accurately as he could and submitting them to senior management in order that a further decision could be taken on how to proceed. That is what he did (Vol. 194, p. 28503). He spoke to the three persons involved, recorded as accurately as he could their observations on the particular paragraph and submitted it to the Director General (Vol. 194, p. 28512).

25. On Monday, November 7, Mr. Barr telephoned Mr. Robichaud in Montreal and asked him to come to Ottawa and to bring Mr. Albert with him. Mr. Robichaud phoned Mr. Albert at home on the evening of November 7, but he was not at home at the time. Mr. Albert returned the call that same evening, at which time Mr. Robichaud told him that he had to go to Ottawa the next day and that he should meet Mr. Robichaud at a shopping centre in Montreal at 6:30 the following morning. Mr. Albert testified that Mr. Robichaud did not tell him why he had to go to Ottawa and he had no idea why he was going. However, Mr. Robichaud told us that he told Mr. Albert that he had to go to Ottawa because Mr. Barr had asked. Mr. Robichaud testified that Mr. Barr told him in the telephone conversation that the purpose of the meeting was to clear up some discrepancy, but that Mr. Barr did not seem to want to discuss it and just asked whether he could be in Ottawa and bring Mr. Albert with him (Vol. 190, pp. 27999-28000; Vol. 191, p. 28242). Mr. Barr said that he does not think he indicated to Mr. Robichaud why he wanted to see him and Mr. Albert and that he thinks they were just told that at Headquarters they wanted to talk to them about something which was going on in the Task Force (Vol. 194, pp. 28513-4). Mr. Barr said that there was no doubt anywhere that this was something that had to be resolved rather quickly and that that would be the basis upon which it was put to Mr. Robichaud (Vol. 194, p. 28515).

26. Mr. Robichaud met Mr. Albert the next morning as arranged, and they drove to Ottawa. Mr. Albert testified that he was not told why they had been summoned to Headquarters (Vol. 191, p. 28279).

27. Mr. Barr testified that in preparation for the meetings he did not obtain any other document, report, statement or note in relation to the meetings between Mr. Albert and Mr. Robichaud and that "to [his] knowledge" Mr. Sexsmith did not give him a background explanation as to why the meeting had occurred and why it had taken place on June 1 (Vol. 194, p. 28517). Mr. Barr told us that he does not recall, before Mr. Robichaud arrived, having obtained from Mr. Robichaud or from anybody else information in relation to the

meetings that Mr. Albert had with Mr. McCleery, and that he undertook no preparation for the meetings with the people involved other than by getting a copy of the June 16 statement (Vol. 194, pp. 28518-9). He said that he has no recollection of having seen the memo for file dated May 31, 1977, prepared by Mr. Robichaud (Ex. M-112 for identification) and that the information in that memo was not given to him before or at the meeting of November 8, 1977 (Vol. 194, pp. 28522-3).

28. Mr. Barr testified that his recollection is that on November 8, he first spoke to Mr. Robichaud while Mr. Albert waited outside and he then spoke to Mr. Albert after Mr. Robichaud had left. Mr. Robichaud said he does not recall having been present when questions were asked of Mr. Albert and that he cannot recall whether Mr. Albert was present when Mr. Barr asked questions of him, Mr. Robichaud (Vol. 194, p. 28525; Vol. 190, p. 28004). Mr. Albert said that he and Mr. Robichaud went to Mr. Barr's office, they talked for several minutes, Mr. Barr explained to them what it was about, Mr. Robichaud withdrew, and he stayed with Mr. Barr at which time Mr. Barr questioned him (Vol. 191, p. 28246).

29. We turn now to what Mr. Robichaud told Mr. Barr that November 8. According to Mr. Barr, Mr. Robichaud said to him in effect, "I did not order him to go see McCleery to get him to keep his mouth shut" but Mr. Robichaud acknowledged that Mr. Albert may have understood him to have said that. In other words, Mr. Barr testified that Mr. Robichaud, although quite clear in his own mind as to whether he had given an order to Mr. Albert to go see Mr. McCleery to get him to keep his mouth shut, felt that Mr. Albert may have his own recollection of that (Vol. 198, pp. 29081-84). Mr. Barr told us that he cannot recall whether Mr. Robichaud indicated to him, on November 8, that Mr. Albert had tried to persuade Mr. McCleery not to go to see the Solicitor General at the time that he met with him the second time (Vol. 198, p. 29100).

30. Mr. Albert's testimony as to what occurred between him and Mr. Barr is as follows: The meeting lasted from three-quarters of an hour to one hour (Vol. 191, p. 28286). Mr. Barr told him that they had received legal advice or a legal opinion from the Solicitor General's office or the Justice Minister, he does not know which one, "to the effect that if his statement were to remain exactly the way he had written it the Force would be subject to legal action or criminal action for intervening with the law or something like that" (Vol. 191, pp. 28249-50).

Q. Once he had made that comment did he request you to do anything?

A. Well he asked of me to change that paragraph, and he asked my permission whether I would agree to change it and I said yes.

(Vol. 191, p. 28250.)

And again:

I was asked to change the report. [our translation]

(Vol. 191, p. 28272.)

He did not have a gun pointed at his head when the request was made and he was free to do it or not. When he was asked and it was explained to him, he was agreeable to the change, to avoid problems. He was not forced and his arm

was not twisted to get him to do it. He felt it was logical or reasonable in the context of the times to avoid even more problems than those they already had (Vol. 191, pp. 28249-51). Mr. Barr did not influence him in any way nor did he try to persuade him by threats or in any other way. Mr. Barr took the trouble, however, to explain to him the problems which would be caused to the R.C.M.P. if his statement remained as it was and he read between the lines what Mr. Barr was saying to him (Vol. 198, pp. 29245-6). He felt he was caught between his duty to tell the truth and his duty to be loyal to the Force and he opted for loyalty to the Force (Vol. 191, p. 28258). He is not sure which report he was asked to change, whether that of May 31, June 1, or June 16 and he was not shown the date. There were several reports that he had submitted where he mentioned having received an order from Mr. Robichaud to meet Mr. McCleery and convince him not to divulge the facts that he knew (Vol. 191, pp. 28271). Mr. Albert said that he thought that it was the statement that he had given after the June 1 meeting with Mr. McCleery that was discussed with Mr. Barr, but that he has been told that it was the June 16 statement and he accepts that (Vol. 198, p. 29247). He was asked to change a report and then there was another paragraph which was added to the effect that he told Mr. Barr that he considered Mr. McCleery a friend and that as far as he was concerned Mr. McCleery was an honest man (Vol. 191, p. 28272). Mr. Barr told him that he was going to re-do the statement and would recall him. Then Mr. Albert went to the Security Service offices in the Headquarters building. Mr. Barr called him later in the afternoon and indicated to him the statement that he should sign. Mr. Barr read the statement but Mr. Albert himself did not read it. He signed it at the bottom and left. Mr. Barr dictated the correction to his secretary, in front of Mr. Albert (so Mr. Albert believes), and that he was called back and shown the text and the corrections were read to him. He said that it was a three-page report and that he read in the report the paragraph concerning the fact that he was a friend of Mr. McCleery and considered him an honest man and that he saw that before signing (Vol. 191, pp. 28272-5). (Here we pause to note that no such signed report has been produced by the R.C.M.P., and that what the R.C.M.P. did produce was Superintendent Barr's memorandum (Ex. M-159), which consists of two pages, the second of which, we observe, was typed on a different typewriter than the first page.) Mr. Albert's conscience was not troubled by the request to change his report. The R.C.M.P. sensed that it was in difficulty and he felt an obligation or duty to change the report. When he was told that the R.C.M.P. was in difficulty he believed it was his duty to see things differently and therefore he changed his declaration voluntarily without anyone, including Mr. Barr, influencing him in any way or putting words in his mouth. He did it voluntarily, believing sincerely that he could help the R.C.M.P., and also at the same time, by changing the declaration, it would rid the Force of some problems. His loyalty to the Force superseded his personal interests, as far as he was concerned, but as he did not have any interest in saying one thing or another, there was no conflict of interest between him and the R.C.M.P. (Vol. 191, pp. 28277-8, 28329-30).

31. Mr. Albert testified that paragraph 5 of his statement of June 16, 1977 (Ex. M-158) where he said, "... the reason for this meeting, of which Supt.

Robichaud was aware, was to convince Mr. McCleery not to pursue his intention to divulge whatever he knew of various incidents" meant that Mr. Robichaud was aware of both the meeting and of the reason for the meeting. He told us that the contents of paragraph 5 were true and that the version in Mr. Barr's memorandum (Ex. M-159) at page 2, where it is said that Mr. Albert went to see Mr. McCleery on June 1 to try to get additional information on what he was going to tell the Solicitor General, is not true. He said that Ex. M-159 is false (Vol. 198, pp. 29220, 29234, 29237). He told us that he does not recall whether the document that Mr. Barr read to him was Ex. M-159, and that he thought the document he signed had three pages while M-159 has only two, but he acknowledged that the document could be M-159 (Vol. 198, pp. 29242-3).

32. Mr. Barr's evidence as to what transpired is as follows: He has no way of knowing whether Mr. Robichaud knew in advance or had some expectation as to why he had been called to Ottawa and his recollection is that he had explained it to Mr. Robichaud. Once Mr. Robichaud knew what the issue was he was quite aware of why the concern was there and was quite intense about the matter and his desire to see it resolved (Vol. 194, pp. 28525-32). Mr. Robichaud did not explain to him that he had had a meeting on May 31, nor can he remember Mr. Robichaud having said that he could complete the issue by giving him documents like the memo of May 31, 1977, or any other document (Vol. 194, p. 28537). He did not offer Mr. Robichaud the opportunity of reading what he, Barr, wrote and Mr. Robichaud laid out how he felt about the issue and that was it (Vol. 194, p. 28536). He did not show Mr. Robichaud his memorandum afterward. He does not think that Mr. Albert knew what the purpose of the meeting was and for that reason he thinks Mr. Albert was "somewhat nervous". He pointed out to Mr. Albert the statement that was of concern, indicated to him that, on the basis of the statement in its then existing form, concern had been expressed by government lawyers that "there had been a tampering with the process of justice". He thought that Mr. Albert realized that "if the statement stood" Mr. Robichaud was involved, and that Mr. Albert was "very upset". He told Mr. Albert that he had been asked to speak to him to seek clarification of what he meant when he wrote the particular sentence or sentences. He indicated to Mr. Albert there was concern about the paragraph and asked him whether "the meaning that appeared to jump out at those who read it" was what he, Albert, "was trying to get across", and, "if not, what was his meaning" (Vol. 194, pp. 28552-8, 28572). Mr. Albert was "very tense" and "very troubled" because, in Mr. Barr's perception, Mr. Albert was a man who was in the midst of a very real human dilemma; and it was a dilemma that came about as a result of a conflict between his responsibility to an organization he was employed with, and an obligation of a personal friendship of some twenty-four years. Mr. Albert opened up the dilemma quite clearly to him and he, Mr. Barr, made it quite clear to Mr. Albert that he would endeavour to articulate as clearly as he could in the memo that he had to prepare the position that Mr. Albert found himself in

such a way that there would be no obscurity, there would be no misunderstanding about his motives; and that hopefully, he could go away feeling a

little better; that, at least, the record was straight on his dealings with Don McCleery and his personal relationship with him.

He did not at any time use words that could lead Mr. Albert to understand that he wanted Mr. Albert to change his statement. He did not indicate to Mr. Albert that there was a complete change of his statement by the words "he was not given an order to attempt to influence McCleery's course of action, but was asked to meet with him to gain additional information or allegations". The memorandum that Mr. Barr wrote was an "attempt to clarify the meaning of paragraph 5, not to change paragraph 5". Had the statement been changed then his understanding of the procedure would have been that someone would have taken a new statement from Mr. Albert. He did not and "to [his] knowledge" no one else did and therefore he did not regard Mr. Albert's statement as having been "changed" (Vol. 194, pp. 28605-6). Mr. Albert, having "become aware of the implications of what he had written", then "went on to elaborate what he really meant", and "it came out that it was really the meeting he [Robichaud] was aware of" (Vol. 198, pp. 29098-9) — in other words, he was not aware of "the reason" for the meeting. The question of the state of knowledge of Mr. Robichaud was not discussed with Mr. Albert on November 8, and the only question that was discussed with Mr. Albert was whether Mr. Robichaud had given him an order. In an attempt to make sure that the process was as fair as it could be, and because his English was better than Mr. Albert's, he agreed to draft a paragraph which he hoped would "encapsulate" Mr. Albert's concerns in such a way that Mr. Albert would feel comfortable that they were recorded. He invited Mr. Albert back to his office to see that this was done and to let him see what was going on the record. For that reason, when a paragraph was drafted, Mr. Albert came back and read it. He has no recollection of Mr. Albert having signed it nor of having asked him to sign it. He just showed Mr. Albert paragraph number 4 on page 2 of Ex. M-159 (Vol. 194, pp. 28573-7). He asked Mr. Albert if he wanted to explain what he really meant by the words used in paragraph 5 of Ex. M-158, and paragraph 4 of his report (Ex. M-159) is Mr. Albert's explanation, as given to him by Mr. Albert. Mr. Albert was not before him under duress and

There was certainly no request from me, or intention on my part, for Mr. Albert to change his statement.

(Vol. 194, p. 28581.)

Mr. Barr could not answer with any accuracy whether Mr. Albert indicated to him that he had been ordered to see Mr. McCleery on a couple of occasions and that this occasion was one of them, nor does Mr. Barr know whether they discussed whether Mr. Albert had gone to see Mr. McCleery at Mr. Robichaud's request (Vol. 194, p. 28578). He does not believe Mr. Albert said he made a mistake. He thinks Mr. Albert's "feeling was that perhaps because of the language, there was a misunderstanding, and a misinterpretation of what he [Albert] meant, and that one could only understand what he meant, if he was able to unfold [the] feelings" that he, Mr. Barr, had earlier described to us (Vol. 194, p. 28579). He does not recall Mr. Albert telling him that documents had been filed with his superiors or that he had documents back in Montreal. No documents were produced or discussed other than paragraph 5 of the June

16 statement (Vol. 194, pp. 28559-60). To Mr. Barr's recollection, Mr. Albert did not request any changes, corrections or additions and he thinks that he was quite pleased with paragraph 4 of Ex. M-159. Mr. Barr did not ask Mr. Albert to sign the memorandum. The contents of the paragraph were somewhat of a relief to Mr. Albert and Mr. Albert was rather pleased to see that it had come out the way it had and therefore there was no question of asking him to initial a draft or anything else (Vol. 194, pp. 28598-28602).

33. Mr. Barr said that his recollection is that as soon as Mr. Albert left his office he dictated paragraphs one, two, three and four of his memo (Ex. M-159) and he then went up and saw Mr. Sexsmith and paragraph five was added after he saw Mr. Sexsmith. He said that pages one and two of his memorandum appear to have been typed with two different typewriters and he has no explanation for that fact (Vol. 194, pp. 28585(b), 28603-4).

34. Mr. Barr testified that Mr. Sexsmith became aware that he, Mr. Barr, was going to look into paragraph 5 of Mr. Albert's statement either because he, Barr, told him or because the Director General told him, or both. He told us that the question of who should be talked to would have been something discussed between himself, Mr. Quintal and Mr. Dare probably the morning of November 7. He said that it was well known within the Task Force that anything dealing with the relationship that existed between Messrs. Albert and McCleery involved two key people, Messrs. Robichaud and Sexsmith, and that if you were "going to look at who could have been involved in the conspiracy to direct or suppress the comments of Mr. McCleery, it had to include Henry Robichaud and Murray Sexsmith" (Vol. 198, pp. 29041-7). He said that when he met with Mr. Sexsmith, Mr. Sexsmith knew full well what the issue was (Vol. 194, p. 28590). He said that Mr. Sexsmith was greatly concerned by what the paragraph suggested.

35. Mr. Barr testified that he did not discuss with Mr. Robichaud, or Mr. Sexsmith, or Mr. Albert whether Mr. Robichaud was aware that Mr. Albert intended to try to persuade Mr. McCleery, for whatever reason, not to go to the Solicitor General. As far as Mr. Barr was concerned, that was not the issue — the issue was whether or not Mr. Albert was ordered to do so (Vol. 198, p. 29205). He said that anything that Mr. Albert did on his own initiative causing a potential legal problem would have to have been dealt with by the investigative side or the "Quintal side" of the Brunet/McCleery investigations (Vol. 198, p. 29179).

CONCLUSIONS

The meeting between Superintendent Robichaud and Staff Sergeant Albert on June 1, 1977

36. We conclude that Superintendent Robichaud did not actually order Staff Sergeant Albert to try to dissuade Mr. McCleery from divulging facts to the representatives of the Solicitor General. Mr. Albert himself did not claim that any such order had been given. However, we accept Mr. Albert's evidence, which was not denied by Superintendent Robichaud, that the two men did

discuss the undesirability of Mr. McCleery divulging facts to the Solicitor General's representatives. We think that when, fifteen days later, Mr. Albert gave his written statement, his memory of what had occurred was fresh and he had no reason to misstate the facts. What he said in that statement was, we think, without ambiguity; we think that the words "The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew..." meant not only that Superintendent Robichaud was aware of the meeting but also that he was aware that Mr. Albert intended to try to dissuade Mr. McCleery. Mr. Robichaud did not have to give Mr. Albert an order to try to dissuade Mr. McCleery. Mr. Albert could reasonably draw an inference, from the request that he see Mr. McCleery again, and the discussion about the undesirability of Mr. McCleery divulging facts, that Superintendent Robichaud would not be displeased if Mr. Albert were to be successful in dissuading Mr. McCleery. We think that it was unacceptable that Mr. Robichaud permitted Mr. Albert to go off to meet Mr. McCleery again, knowing that Mr. Albert intended to try to dissuade Mr. McCleery, without instructing him that he was not to make such an attempt. His failure to give such instructions cannot be distinguished in its effect from giving an order to Mr. Albert to try to dissuade Mr. McCleery.

37. Did Mr. Sexsmith have anything to do with what Mr. Robichaud did? We think that it is plain from Mr. Sexsmith's own candid evidence that when he met Mr. Robichaud on the evening of May 31 the concern was not with the possibility that Mr. McCleery would go to the press, nor with getting more details about what Mr. McCleery might divulge to the Solicitor General's representatives, but with whether Mr. McCleery might still not divulge any facts to them. While Mr. Sexsmith did deny to us that he and others had "meant to somehow prevent McCleery from seeing the Solicitor General and prevent McCleery from telling him whatever he was going to tell him" (Vol. 190, p. 28055), we are satisfied, on the basis of Mr. Robichaud's evidence, that on the evening of May 31 he and Mr. Sexsmith did discuss having Mr. Albert go back to see Mr. McCleery a second time, and that Mr. Sexsmith at least went along with that plan. Mr. Sexsmith's own memory of that meeting, as testified to by him, is, at best, slight, and his denial lacks persuasiveness in consequence. Mr. Sexsmith admits that he

was aware that Albert was personally concerned about what McCleery was going to do.

(Vol. 190, p. 28090.)

We conclude, on a balance of probabilities, that, knowing that Mr. Albert wanted to dissuade Mr. McCleery, Mr. Robichaud and Mr. Sexsmith discussed the matter and decided to send Mr. Albert to see Mr. McCleery a second time, knowing full well that, unless forbidden to do so, Mr. Albert would attempt to dissuade Mr. McCleery.

38. We consider that it was unacceptable for Mr. Albert to attempt to dissuade Mr. McCleery from divulging facts to the Solicitor General, and for Mr. Robichaud and Mr. Sexsmith, in effect, to give him tacit encouragement to do so. If a former member of the R.C.M.P. believes that he has information about the R.C.M.P., of which the Solicitor General should be made aware, it is

undesirable for members of the R.C.M.P. to attempt to discourage or prevent him from doing so.

39. We do not conclude that it is a fact that Mr. Albert prepared written reports of his meetings of May 31 and June 1 with Mr. McCleery. While Mr. Albert expressed himself as being "positive" that he did so in regard to those meetings, our impression of his evidence as a whole is that he is reconstructing his memory based on what he says was the rule that written reports of meetings with the ex-members were to be submitted. He does not say that these cases were no exception to that rule. He says only that he does not "think" that they were exceptions to the rule, and that he "believes" that when he prepared his written report on June 16 he used the two earlier reports as references — "That is the idea I have of it", he said (Vol. 191, p. 28238). We think that this evidence is insufficient upon which a conclusion can be reached that he made written reports of the meetings of May 31 and June 1, other than the one he prepared on June 16, and that therefore it is not surprising that the R.C.M.P. could not locate any such reports.

The interview on November 8, 1977, of Staff Sergeant Albert by Superintendent Barr

40. On January 25, 1980, Mr. Albert was interviewed by a member of our investigative staff. This interview was part of the normal method of inquiring into complaints made by persons to us about the conduct of members of the R.C.M.P. Mr. Albert had lodged a complaint with us concerning a matter that he thought had occurred after he left the Force in 1978 and joined the private security firm of which Messrs. McCleery and Brunet were members. In the interview Mr. Albert referred to the discussion he had had on June 1, 1977, with Superintendent Robichaud, in which, he stated, Superintendent Robichaud had "discussed" with him that he was to see Mr. McCleery a second time and to "try to persuade" the latter not to see a representative of the Solicitor General. Mr. Albert even referred to the possibility that certain persons might interpret what Superintendent Robichaud had said rather as a request than as an order. When testifying, Mr. Albert suggested that what he said to our investigator constituted an allusion to the events of November 1977 involving himself and Superintendent Barr (Vol. C120, p. 15567). We can detect no such reference in what he said to our investigator. In any event, Mr. Albert himself finally told us that, when he met our investigator, he did not intend to refer to "the Barr matter" (Vol. C120, pp. 15566-7). Mr. Albert's failure to mention to our investigator what in June 1980 he testified to us had occurred is, to us, the first indicator that Mr. Albert's testimony is not accurate as to whether Mr. Barr, on November 8, 1977, asked him to change the report he had made on June 16, 1977.

41. The second such indicator is found in the letter which his counsel, wrote to us on May 2, 1980. We must quote the letter in part:

Some time ago, I learned that immediately subsequent to a telephone call which Mr. McCleery had with the office of the Solicitor General in which he indicated that "the APLQ incident" was not "an isolated incident" (as the then Solicitor General had implied) and agreed to meet with

the then Deputy Solicitor General to elaborate on this, an active attempt was made by a senior officer of the RCMP in Montreal through a more junior officer, to ascertain what information McCleery would reveal. Subsequent to the report of this officer, following a meeting with McCleery, the said officer received an order to again meet with McCleery and this time dissuade him from divulging this information to the office of the Solicitor General.

Written reports of these two meetings were filed by the said officer.

I believe this is significant since on June 6, 1977 when the Deputy Solicitor General first advised the Solicitor General of the substance of the information which inter-alia McCleery had communicated to him that same day, the Solicitor General was attending a meeting with then Commissioner Nadon and General Dare. Both Nadon and Dare expressed surprise at what McCleery had just divulged and suggested that his motives were less than honourable. *As at that date* and in fact since the very latter part of May, the RCMP were not only aware of what McCleery would eventually disclose to the office of the Solicitor General and his motives in so doing but had actively attempted to dissuade him from disclosing this information to the office of the Solicitor General.

Subsequent to McCleery's meeting in Ottawa on June 6, 1977, the internal RCMP report of this attempt to dissuade McCleery was destroyed by a Superintendent of the RCMP who directed that another report, which did not refer to "instructions to dissuade McCleery", be substituted: the reason given by the Superintendent was that this original report would be "compromising" to the RCMP if a Commission of Inquiry were ever established and this document came to light.

The last paragraph quoted brought to our attention for the first time the possibility that some then unspecified Superintendent had destroyed Mr. Albert's report of the attempt to dissuade Mr. McCleery and substituted another report. When we received Mr. Campeau's letter we considered this allegation to be a most serious one, for, if true, it appeared to be an attempt on the part of someone in the R.C.M.P. to alter the R.C.M.P.'s internal records and thus perhaps to mislead us. It was in part because of this paragraph that we scheduled hearings in June 1980 and subpoenaed Mr. Albert. (Another reason was to inquire into the first allegation, that Mr. Albert had been ordered to attempt to dissuade Mr. McCleery from disclosing facts to the Solicitor General.)

42. It was only when Mr. Albert was recalled to testify on March 11, 1981 that we realized that the last words of the paragraph were of special significance when we came to assess the credibility of Mr. Albert's serious allegation against Superintendent Barr. It will be observed that the letter states that the reason given by "the Superintendent" was

that this original report would be "compromising" to the RCMP if a Commission of Inquiry were ever established and this document came to light.

This is of vital importance, for here Mr. Albert's counsel states this as *the reason* given by the Superintendent for destroying the report by Mr. Albert and for issuing the "direction" that another report be substituted. Mr. Albert

admitted that he had given this information to Mr. Campeau. The "reason", if it had been stated by Superintendent Barr, was such that it could have been given only *before* the creation of a Commission of Inquiry. This Commission of Inquiry was established on July 6, 1977. Therefore, if that "reason" was stated by Superintendent Barr, the incident between him and Mr. Albert must have occurred before July 6, 1977. In fact, however, we know it occurred in November 1977. Putting the problem created by this sentence of the letter another way: we know that Mr. Albert met Superintendent Barr in November 1977. Assuming that when Mr. Albert told Mr. Campeau what had been said and done by Superintendent Barr, he had his dates wrong, it nevertheless remains the case that he appears to have stated to Mr. Campeau that Superintendent Barr gave a certain reason for what was being done. That reason is so nonsensical that it could not have been given. Nor, we note, did Mr. Albert state in his testimony that Superintendent Barr had given that reason.

43. The third such indicator is found in Mr. Albert's testimony that he raised the allegation against Superintendent Barr for the first time when he told Mr. Campeau. That must have been on March 13, 1980, for Mr. Campeau's statement of account for services rendered shows that it was on that date that he met Mr. Albert. Why did he tell Mr. Campeau then? He did so, he says, "Sur le coup de la colère" ("in a fit of temper"). He says that he was "tellement vexé" ("so annoyed") by the matter concerning which he had lodged a complaint with the Commission that he embarked upon a discussion with Mr. Campeau and mentioned his meeting with Superintendent Barr (Vol. C120, p. 15562).

44. For these reasons we disbelieve Mr. Albert's testimony that Superintendent Barr in November 1977 asked him to change a report that he had previously made as to what Superintendent Robichaud had said to him. Rather than conclude that Mr. Albert intentionally gave false testimony as to what Superintendent Barr said to him, we think that the anger that from January 1980 to this day has been entertained by Mr. Albert toward the R.C.M.P. for having, as he thinks, conducted surveillance upon him, has clouded his memory as to what occurred between himself and Superintendent Barr. Furthermore we accept the testimony under oath of Superintendent Barr that

There was certainly no request from me, or intention on my part, for Mr. Albert to change his statement. Nor did I have a mandate to change his statement. His statement stood as it is. His statement still stands as it is, and it is, as far as I know, the only statement on the records. All we have is a memo that makes some comment on one paragraph in response to questions raised.

We think that Superintendent Barr did open his meeting with Mr. Albert by referring to the concern that had been expressed at the meeting with several counsel, and that this may have led Mr. Albert to think that he was expected to alter his story as to what Superintendent Robichaud had said to him. With hindsight, it would have been preferable for Superintendent Barr not to have mentioned what the concern was and simply to have asked Mr. Albert once again to state what it was Superintendent Robichaud had said. The manner of

raising the subject was such that Superintendent Barr should have realized that it might cause Mr. Albert to be concerned, not about the truth, but about protecting the Force. As Superintendent Barr told us,

The force is seen by people as being almost a family, and if you feel you are about to betray the family, it is a very difficult thing to do. . . . When you have to balance the loyalty that you have to the members of the family, to the loyalty of the family itself. I would submit it is a very, very difficult position for anyone to be in.

(Vol. 194, p. 28584.)

As Superintendent Barr was aware that members such as Mr. Albert have such strong feelings of loyalty, it should not have come as a surprise to him that the manner of raising the subject would, as he admits, be likely to cause Mr. Albert to have concern as to whether Mr. Robichaud could be involved in a criminal investigation (Vol. C194, p. 28585). Nor should he have been surprised that Mr. Albert did, as Superintendent Barr himself sensed, become "considerably emotional about the dilemma he obviously felt he was in" (Vol. 194, p. 28583).

45. Although Superintendent Barr's method of opening the subject was unwise, when viewed with the perspective of hindsight and by the application of a standard of perfection, that is a far cry from concluding that he intended to cause Mr. Albert to mis-state the facts and be untruthful. We do not believe that he said anything to Mr. Albert with the intention of ordering, or even asking or expecting, Mr. Albert to falsify his account of what had occurred. We do not fault Mr. Barr in any respect, not even as to the degree of wisdom he used, for at the time we are satisfied that the pressures of time that were upon him in November 1977 were very great. Moreover, we do not conclude that Mr. Albert was lying when he made his allegation to us about Superintendent Barr. Rather, we believe that the emotions evoked by his anger at being, as he thought, the object of surveillance in January 1980, clouded his judgment when, later in 1980, he testified before us as to whether Superintendent Barr had, on November 8, 1977, expected him to change his account of the facts.

46. As we have concluded that Superintendent Barr did not intend to direct or persuade Mr. Albert to alter his version of what had occurred between him and Superintendent Robichaud, it follows that we do not think that Superintendent Barr received any instructions or suggestions from any of his superiors that he should try to get Mr. Albert to change his story. There is no evidence of any such conspiracy by members of the senior management of the Security Service or the R.C.M.P., and the likelihood of any such conspiracy is rendered nugatory by the fact that no written statement was taken from Mr. Albert, so that, in terms of written statements, Mr. Albert's statement of June 16, 1977, remained unaltered.

47. We, like Commissioner Gilbert, consider that Superintendent Barr's memorandum on its face discloses that he failed to inquire into whether, even if Superintendent Robichaud did not order or ask Staff Sergeant Albert to try to prevent or persuade Mr. McCleery from divulging facts to the Solicitor General's representative, nevertheless Superintendent Robichaud "was aware"

(to use Mr. Albert's own words on June 16) of "the reason for the meeting" — i.e. that Mr. Albert intended to try to persuade Mr. McCleery, and did nothing to prevent Mr. Albert from making that attempt. However, we draw no inference whatsoever from the failure of Superintendent Barr to inquire into that issue. Superintendent Barr's memorandum answered the questions put, but went no further.

Minority Report of Commissioner Gilbert

48. I am satisfied that during the meeting between Mr. Robichaud and Mr. Albert on June 1, 1977, prior to Mr. Albert's meeting with Mr. McCleery, there was a discussion about Mr. Albert trying to dissuade Mr. McCleery from going to see the Solicitor General or his representatives. I accept Mr. Albert's evidence that such a discussion occurred. I believe that it was clearly understood between Mr. Robichaud and Mr. Albert that Mr. Albert should meet immediately with Mr. McCleery with that purpose in mind since it is acknowledged by both Mr. Robichaud and Mr. Albert that the latter was on duty when he saw Mr. McCleery on June 1. I am satisfied that Mr. Robichaud ordered, or instructed or asked Mr. Albert to carry out that mission. To me, whatever the verb used, the relationship was one of a superior speaking to a subordinate. I am satisfied that Mr. Robichaud ordered Mr. Albert to carry out that mission, in the sense of a superior speaking to an inferior. I have no doubt that Mr. Albert was more than willing to meet again with his old friend, Mr. McCleery, and once again to try to convince him to stop pursuing his goal of obtaining redress for his dismissal from the Force, but Mr. Albert was adamant that on this occasion he was not doing it on his own initiative.

49. Mr. McCleery's evidence was clear that Mr. Albert persistently tried to get him to drop his efforts to seek redress and that on June 1, 1977, he noticed no difference in Mr. Albert's treatment of the matter. To him, Mr. McCleery, Mr. Albert was counselling him in the same way as he had on previous occasions.

50. I consider that my conclusion in this regard is consistent with the words used by Mr. Albert in his report of June 16, 1977, when he says:

The reason for this meeting, of which Supt. ROBICHAUD was aware, was to convince MCCLEERY not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex-confrères and discredit them for things they believed were right in the fight against Terrorism (the F.L.Q.).

I am also fortified in my conclusion by Mr. Albert's notes in his diary, made following the meeting, in which he says: "meeting not too encouraging". If his mission had simply been to get more information, those words would not have been appropriate; either he would have had the information or not. But if his mission was to dissuade Mr. McCleery, then the words are appropriate to describe his lack of success. I cannot accept Mr. Robichaud's evidence that he was simply seeking more information as to Mr. McCleery's intentions. He did not point to a single additional piece of evidence obtained by Mr. Albert on June 1, 1977, nor to his having reported any such additional evidence to Mr. Sexsmith. That is not conclusive, of course, but I consider it significant.

51. Counsel for the Government of Canada were rightly concerned when, on November 6, 1977, they read the relevant sentence in Mr. Albert's report of June 16, 1977, and attributed to it the possible meaning which they did. It was clearly improper for the Force, or a member of the Force, to attempt to dissuade Mr. McCleery from going to see the representatives of the Solicitor General. The Force, itself, had an obligation to bring the matters raised by Mr. McCleery to the attention of the Solicitor General.

52. While there is no conclusive proof that Mr. Robichaud's conduct on June 1st resulted from instructions received from his superiors, it can be inferred that Mr. Sexsmith and Mr. Nowlan were aware in advance of the intended second meeting between Mr. Albert and Mr. McCleery. This was discussed on the evening of May 31, when Mr. Robichaud drove to Ottawa to report on what had been learned by Mr. Albert at his May 31 meeting with Mr. McCleery. Mr. Robichaud recorded the information in the memo for file (Ex. M-112). It would be highly illogical that a second meeting would then be planned without a single word being uttered as to the purpose to be achieved. In this respect the report prepared by Mr. Barr (Ex. M-159) on November 8, 1977, which I shall discuss shortly, is a direct illustration of the involvement of Mr. Sexsmith in the meeting of June 1. It states:

The D.D.G. (Ops) when asked for his recollections of his instructions to Supt. Robichaud on the evening of May 31st, and specifically in relation to the second meeting with McCleery, stated that *this meeting was agreed upon to solicit additional information on McCleery's allegations.* (My emphasis.)

53. This statement, which Mr. Sexsmith obviously volunteered to Mr. Barr on November 8, 1977, contrasts with his testimony before our Commission. When he was asked about his participation in the idea of having Mr. Albert meet Mr. McCleery once more, i.e. on June 1; he answered:

A. I don't recall any specific discussion in that regard.

(Vol. 190, p. 28085.)

Mr. Sexsmith was obviously wrong when he so testified and I accept his statement to Mr. Barr in November 1977, when his memory was likely to be fresher.

54. But there remains the enigma as to what the reason was for the meeting of June 1st between Mr. Albert and Mr. McCleery. One thing is certain, Mr. Albert did not initiate this meeting. As I have concluded, the meeting was planned by Mr. Robichaud with the cooperation of Mr. Albert, who told us frankly that he would have liked the plan to succeed (Vol. 191, p. 28225).

55. On the whole, I conclude that the meeting of June 1 between Mr. Albert and Mr. McCleery was discussed between Mr. Robichaud and Mr. Sexsmith and for that reason the true purpose of the meeting must also have been discussed. I am satisfied that the real purpose of that meeting was to try to persuade Mr. McCleery not to tell the Solicitor General about the wrongdoings of the R.C.M.P. The conclusion that Mr. Sexsmith was involved in both the planning and the purpose of the June 1 meeting is reinforced by three facts which put together show Mr. Sexsmith's state of mind at that time.

56. The first of these facts is Mr. Sexsmith's candid admission to us that "he would have thought that after all this time your commission has been sitting, it would have become rather obvious that the Security Service kept certain operational things from the Solicitor General" (Vol. 191, p. 28058). The least that can be inferred from that statement is that Mr. Sexsmith was certainly prepared in his own mind to hide things from the minister.

57. The second fact which supports the conclusion is that throughout the period of preparation of a statement to be made by the Honourable Francis Fox, in the House of Commons, which focussed on the A.P.L.Q. matter as an isolated incident, the senior echelon of the Force failed to disclose to Mr. Fox the memorandum made by Mr. Robichaud which contained many revelations.

58. Thirdly, it is significant in this chronology of events that Mr. Sexsmith was concerned to know exactly what information had been given to the Minister or his deputy. For example, on June 9 he placed a call to Mr. Tassé in an effort to find out what was known by the Minister.

59. For me, those facts put together argue persuasively that Mr. Sexsmith (and other officers of the Force) not only tried to keep the Minister in ignorance of its wrongdoings but tried to find out how much the Minister knew after Messrs. McCleery and Brunet had met Messrs. Tassé and Landry on June 6. These facts also demonstrate forcibly that the attempt to have Mr. Albert dissuade Mr. McCleery from speaking to the Solicitor General was an objective of top priority. Mr. Sexsmith's involvement in the three factual situations prevents me from accepting that he had no knowledge of a second meeting between Mr. Albert and Mr. McCleery and of its purpose. Furthermore, I am not prepared to accept Mr. Sexsmith's testimony on this matter because he denied to us any involvement in the June 1 meeting, while he clearly had stated to Mr. Barr that the purpose agreed upon for that meeting was to try to elicit more information about Mr. McCleery's allegations.

60. There is no evidence that Mr. Nowlan participated in this episode, even though he was present at the meeting between Mr. Sexsmith and Mr. Robichaud on May 31, 1977.

61. On the whole my conclusion as to the facts and comments on the conduct of the participants are as follows.

62. On May 31, in the evening, Mr. Robichaud discussed with Mr. Sexsmith the necessity of asking Mr. Albert to meet Mr. McCleery again, obviously for the purpose of trying to dissuade him from telling the Solicitor General about the wrongdoings of the R.C.M.P. In this regard the conduct of Messrs. Sexsmith and Robichaud is unacceptable.

63. On June 1, in the morning, Mr. Robichaud called Mr. Albert into his office and asked him to meet again with Mr. McCleery, obviously to try to dissuade him from speaking to the Solicitor General. In this regard the conduct of Mr. Robichaud is unacceptable.

64. On June 1, at lunch time, Mr. Albert met Mr. McCleery and tried to convince Mr. McCleery not to talk to the Solicitor General. In this regard the conduct of Mr. Albert is unacceptable.

65. It is my view that the conduct of Messrs. Sexsmith and Robichaud is subject to much greater censure. They were senior officers: at the time respectively Deputy Director General (Operations) and Acting Area Commander of the Security Service in the Province of Quebec. Whether or not they initiated the proposal that on June 1, 1977, Mr. Albert should attempt to dissuade Mr. McCleery does not conclude the matter. In my opinion their conduct was tantamount to an effort, through Mr. Albert, to try to dissuade Mr. McCleery. But even if I am wrong in that view, I am satisfied that they in the end knew, or ought to have known, what the course was that Mr. Albert intended to pursue or had pursued. They should have ordered Mr. Albert not to do so and having found out about it after the fact, the matter should have been taken to the Director General at least.

66. I have no doubt that when Mr. Albert met with Mr. McCleery on June 1, 1977, he was doing so at least with the direct authorization of Mr. Robichaud and with the agreement of Mr. Sexsmith and that Mr. Robichaud and Mr. Sexsmith understood the significance of what Mr. Albert was going to do. The conduct of Mr. Robichaud and Mr. Sexsmith was highly improper and was, in my opinion, motivated by an attempt to cover up wrongdoings of the Security Service. It was therefore unacceptable.

67. There is an additional aspect of this event which must be looked into. It has to do with the question whether Mr. Albert produced written reports after his meetings with Mr. McCleery on May 31 and on June 1, 1977, and what happened to those reports. On this point, the evidence is once again contradictory.

68. On one hand, Mr. Robichaud says emphatically that he did not receive a written report from Mr. Albert. On the other hand, Mr. Robichaud says that the requirement was to produce a report in writing if "they asked for something" (Vol. 190, p. 27932). Whatever these words of Mr. Robichaud may mean, it is logical to conclude that given the gravity of the situation and the fact that Mr. Robichaud made a report in writing when he reported in Ottawa on the evening of May 31, Mr. Albert is likely to have been expected to report in writing on his two meetings with Mr. McCleery.

69. This point is elucidated to my satisfaction when I read the testimony of Mr. Albert. Indeed Mr. Albert said that the rule was to report in writing (Vol. 191, p. 28228) and, to the best of his recollection, he did report in writing after each of his meetings which he attended on a duty basis. Mr. Albert was fortified by his recollection that when he produced a report for Mr. Nowlan on June 16 he was assisted by the two other reports which he had prepared (Vol. 191, pp. 28238-9). Mr. Albert is candid enough to state openly that he remembers also meeting privately with Mr. McCleery on June 14 at the Elmhurst Dairy and after that meeting he did not submit a report, because he had not met him on duty at the request of his superior (Vol. 191, p. 28231).

70. While those reports were addressed to Mr. Ferraris, I nevertheless believe that Mr. Robichaud saw them. In any event, Mr. Robichaud knew their content, since he was the one to whom Mr. Albert reported the outcome of each of his meetings with Mr. McCleery. Furthermore, without accusing

anyone of misconduct, as nobody could be identified in that respect, the reports of Mr. Albert could not be found. This is appalling, and I can say no more. One logical observation though is that the two reports in question would unquestionably shed light on the purpose of the meetings between Mr. Albert and Mr. McCleery, had they been produced.

71. I now turn to the review of this matter as it was revived in November 1977. The problem then arose under circumstances well described in the memorandum (Ex. UC-84), the contents of which I fully accept. It reads:

On November 1st, 1977, Joseph R. Nuss, Q.C. and Allan Lutfy, both counsel to the Solicitor General, in the presence of then Assistant Commissioner Raymond Quintal, had seen, among other documents, the document which is now Exhibit M-158.

On November 5, 1977, Messrs. Nuss and Lutfy, when they were going through the Quintal-Nowlan Report at RCMP Headquarters in Ottawa, noted that Tab 46 (now Exhibit M-158) contained the following text:

"My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on Jules Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind."

Messrs. Nuss and Lutfy became interested in that text since it seemed to indicate a possible attempt a) to prevent the representative of the Solicitor General from learning certain allegations and b) to persuade McCleery not to divulge criminal acts. They drew the attention of Assistant Commissioner Quintal to this document on the same day and indicated that they intended to raise this question with J.F. Howard, Q.C., Chief Counsel to the Commission.

This was done at a meeting held on the next day, November 6, which was attended by J.R. Nuss, Q.C., A. Lutfy, J.F. Howard, Q.C., Assistant Commissioner Quintal, Superintendent D.K. Wilson and Superintendent A.M. Barr.

During the discussion, the RCMP expressed a desire to clarify this question through an interview with Staff Sergeant Albert and Superintendent Robichaud. Mr. Howard, accepted this suggestion provided that the result be communicated to him. Mr. Nuss and Mr. Lutfy agreed to this manner of proceeding.

72. That there was need for clarification after Mr. Albert made the statement to Mr. Nowlan is clear. Mr. Albert's statement, as worded, raised an issue which the government counsel had rightly perceived. Was there on the part of Mr. Albert an intention to prevent the Solicitor General from learning certain allegations and if so, to what extent were Mr. Robichaud and higher echelons involved? To answer these questions required explanations from Mr. Albert on

points which his statement (Ex. M-158) did not cover. In addition there was a need to clarify the meaning of one phrase used in the statement.

73. Let us look first at omissions which needed to be corrected to insure a clarification of the issue. When I read carefully paragraph 5 of Exhibit M-158, it is striking that the statement made by Mr. Albert to Mr. Nowlan on June 16, 1977, does not specifically say whether he, Mr. Albert, had spoken to Mr. McCleery along the lines of the stated purpose of the meeting. This point, needless to say, called for some clarification. Mr. Barr testified that:

the relevancy was whether or not Mr. McCleery had been counselled not to speak out. Beyond that everything else was, you know, was incidental, if you like.

(Vol. 194, p. 28539.)

With respect, I cannot accept that that was the only relevant point. First, it was extremely important to ascertain what Mr. Albert had spoken to Mr. McCleery about, a point which his statement of June 16, 1977, did not make. Second, it was crucial to ascertain whether Mr. Albert had been ordered or instructed or asked or permitted by Mr. Robichaud to speak to Mr. McCleery. Third, if the second point was answered in the affirmative, what exactly was Mr. Albert asked or instructed to tell Mr. McCleery. Finally, it was equally important to find out whether Mr. Albert had informed Mr. Robichaud, after the meeting of June 1, as to what had been said by Mr. McCleery. In my opinion it was essential to cover these four omissions to appreciate correctly the magnitude of the problem and to be able to judge the conduct of the participants.

74. In addition, there is no doubt that paragraph 5 of Exhibit M-158 needed to be clarified on another very important issue. This need arises out of the ambiguous wording. The phrase reads:

The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service. . .

As one cannot fail to observe, the ambiguity has to do with the words "The reason for this meeting, of which Supt. Robichaud was aware". Was Supt. Robichaud aware of the fact of the meeting, or was he aware of the purpose of the meeting or was he aware of both the fact of the meeting and the purpose of it?

75. According to Mr. Barr's testimony, this meeting with Mr. Albert produced clarification of this very issue in that it brought out that it was really the "meeting" that Mr. Robichaud was aware of, not the "reason" for the meeting. However, in his report (Ex. M-159), covering this portion of the meeting, Mr. Barr wrote:

S/Sgt. Albert, when asked to comment on his previous statement, confirmed that he was not given any order to attempt to influence McCleery's course of action but was asked to meet with McCleery to gain additional information on allegations.

This report states clearly that Mr. Robichaud was aware of both the meeting and the reason for the meeting. However, it is immediately apparent that,

according to this document, the "reason" for the meeting is not the same as that set out by Mr. Albert in para. 5 of Ex. M-158, i.e. "to convince McCleery not to pursue his intention to divulge", but rather, "to gain additional information on allegations".

76. Mr. Barr did not tell Mr. Albert that this was not only a clarification but a radical change of his previous statement. His testimony on this point is as follows:

Q. Did you indicate that to him, that there was a complete change?

A. No, I did not, sir. If he takes that impression, then there is a misunderstanding. The memo I wrote, as indicated, was a memo in an attempt to *clarify* the meaning of paragraph 5, not to change paragraph 5. Paragraph 5, as I was concerned (sic), and as far as I was concerned, and as far as I am concerned now, in his statement, stands as his statement of June 16th. Had that statement been changed, then my understanding of the procedure would have been that someone would have taken a new statement from him. I didn't. And to my knowledge, no one else did. *Therefore, his statement was not changed.* (My emphasis.)

(Vol. 194, pp. 28605-6.)

However, when this line of questioning is pursued to the limit by Commission counsel, here is what Mr. Barr says:

Q. But just reading the first few lines of paragraph 4, sir, would you not recognize that this is a *complete change* from his statement of the 16th of June, 1977.

A. *Yes, obviously it is.* But if you read it the way it was intended to convey his — as I understood, his meaning was that the misunderstanding of his statement was possibly in the wording. And that's all that was being recorded: that in his view, his paragraph 5 of June 16 could have been understood because of the wording that he used. (My emphasis.)

(Vol. 194, p. 28606.)

And then, the paragraph goes from there.

77. In my opinion, Mr. Albert did, on November 8, change his statement of June 16, and that change was as to the reason for the meeting. The purpose of the meeting on November 8 was purported to be to determine whether or not Mr. Robichaud was aware of the "reason" for the meeting between Mr. Albert and Mr. McCleery on June 1, 1977. The end result of the meetings between Mr. Barr and Messrs. Robichaud and Albert on November 8 was that Mr. Robichaud was aware of the reason for the June 1 meeting but that the reason for that meeting, previously stated by Mr. Albert (Ex. M-158) was now changed (Ex. M-159). Mr. Albert says that the reason contained in Exhibit M-159 is false (Vol. 198, p. 29237). I believe that.

78. To accomplish this mission, Mr. Barr had a very simple thing to do. He should have called in Mr. Robichaud and Mr. Albert and asked them to elucidate the ambiguity by simply showing them the different meanings that could be attributed to the ambiguous phrase. Mr. Barr could then have requested Mr. Robichaud and Mr. Albert to submit a short report to clarify

the issue, making sure that Mr. Robichaud did it in his own words, distinctly and without the knowledge of what Mr. Albert was himself going to write. Then Mr. Barr could have gone to Mr. Sexsmith and requested him to do the same thing. This is not what did take place. Instead, Mr. Barr told Mr. Albert that some government lawyers had looked at his statement and considered that if certain of the language remained as written the Force could be in serious trouble for obstruction of justice. He pointed out to Mr. Albert the offending words and how they had been interpreted by the lawyers. He then asked Mr. Albert if the lawyers' interpretation was accurate. Faced with this, Mr. Albert said that he felt compelled to change his statement.

79. I have no doubt that the way in which the interview was structured, tended to lead Mr. Albert inexorably to the conclusion that if he did not change his statement he would be acting disloyally towards the Force and placing it and Mr. Robichaud in a difficult position. An interview conducted in that fashion is totally unacceptable. I am surprised at the testimony of Mr. Barr who recognized first that "the relevancy was whether or not Mr. McCleery had been counselled not to speak out" (Vol. 194, p. 28539) and subsequently answered Commission counsel as follows:

Q. Did he (Albert) indicate to you, sir that he had gone there at Mr. Robichaud's request? Or did you know that?

A. I don't know whether we discussed it in those terms. *I do not think that was necessarily relevant.* (My emphasis.)

(Vol. 194, p. 28578.)

80. For me nothing could be more relevant if it is true that Mr. Barr, as he says, was trying to determine whether or not Mr. McCleery had been counselled not to speak out.

81. I have concluded that Mr. Barr's attitude was tantamount to asking Mr. Albert whether he wanted to change his statement and in these circumstances I can see how it was not relevant to discuss with Mr. Albert whether or not Mr. Robichaud had requested him to go to the meeting.

82. One word has to be said as to the manner in which Mr. Albert's new statement was taken. According to Mr. Barr, he wrote, himself, the change in the statement and then read it to Mr. Albert. Mr. Barr said that he did not give Mr. Albert an opportunity to read it and to sign it should he find it in conformity with his own thinking. Fortunately, Mr. Albert says that he saw the text that Mr. Barr prepared in lieu of a corrected statement, which he remembers to be a three-page statement, and that he read it and then signed it. Mr. Barr would have acted in an abnormal manner if he had not done all that Mr. Albert said he did, for it is a matter of very common practice to have one sign a statement, the purpose of which is to correct a previous statement, also signed. I think that this sequence took place in the manner described by Mr. Albert. But then the question arises as to where the three-page statement is that Mr. Albert said he had signed. This document has not been produced.

83. Sometime in January 1980, Mr. Albert came to see one of our investigators to make an allegation about his being victimized by the Force. Specific-

ly, Mr. Albert complained of the fact that the Force had put him under surveillance — a situation which made him extremely angry at the Force. There is no doubt that, those being the circumstances when Mr. Albert decided to tell this Commission about the November 8, 1977, meeting with Mr. Barr and the request to change his version, there was a degree of retaliation on the part of Mr. Albert. But I do not think that he who retaliates is necessarily lying for that very reason. I believe that Mr. Albert was somehow inspired by vengeance when he revealed things to our investigator, but this would not, in my opinion, cloud his memory or justify a conclusion that what he was saying was necessarily wrong.

84. In reaching my conclusions, I must stress that I am not depending on a choice between the version of Mr. Barr and that of Mr. Albert, but rather, on an overall appreciation of what both Mr. Barr and Mr. Albert have said. Mr. Albert's testimony is, in my opinion, confirmed in many ways by that of Mr. Barr.

85. On the whole I therefore conclude:

- (a) On November 6 the several legal counsel agreed to a clarification task to be accomplished, provided the result be communicated to Mr. Howard. I conclude that such result was not communicated to Mr. Howard. In this regard, the conduct of Mr. Barr and Mr. Quintal is not acceptable.
- (b) The clarification was about Mr. Robichaud's awareness: was he aware of the fact of the meeting of June 1 or of the purpose of the meeting, or both. As to the purpose, Exhibit M-158 leaves no room for doubt, nor need for clarification.
- (c) Mr. Barr opened the meeting with Mr. Albert by pointing out to him the problem the Force was facing if paragraph 5 of the statement (Ex. M-158) were to remain as it was.
- (d) Mr. Barr asked Mr. Albert whether he minded changing his statement. It was a request, not an order. In this regard Mr. Barr's conduct was unacceptable.
- (e) Mr. Barr reminded Mr. Albert of his duty of loyalty to the Force. In this regard Mr. Barr's conduct was unacceptable.
- (f) Mr. Barr did not discuss with Mr. Albert whether Mr. Robichaud had requested him to go and see Mr. McCleery. Mr. Barr did not see it as relevant. In this regard Mr. Barr was acting in a careless manner.
- (g) Mr. Albert responded favourably to Mr. Barr's request to change his statement and therefore changed it. The whole exercise between Mr. Albert and Mr. Barr was not one of clarification, but one of discussing whether Mr. Albert was ready to change paragraph 5 of Exhibit M-158. In this regard, the conduct of Mr. Barr and Mr. Albert was unacceptable. At the end of the interview, what we have is a new version from Mr. Albert, which confirms that Mr. Albert was asked to change his statement of June 16, 1977.

- (h) Mr. Barr wrote the new statement. Mr. Albert signed a *three-page document*. Mr. Barr read the statement. This document has not been produced.
- (i) The June 16 statement of Mr. Albert (Ex. M-158) is true, and Mr. Albert meant by that statement that Mr. Robichaud was aware of both the fact of the meeting of June 1 and of the purpose of that meeting. Exhibit M-159 does not represent the truth as it refers to Mr. Robichaud and Mr. Albert.
- (j) If in conducting himself, both in what he did and how he did it, Mr. Barr was executing instructions which he got from Mr. Dare and Mr. Quintal, the latter two are equally to be blamed. However, I have no evidence that that was the case.
- (k) Even if Mr. Albert was affected by anger when he saw our investigator in January 1980, his November 16 statement to Mr. Nowlan (Ex. M-158) shows that he had told Mr. Nowlan that Mr. Robichaud was aware of the June 1 meeting and/or its purpose.
- (l) When he met Mr. Barr on November 8, 1977, Mr. Albert changed his version. The question is whether he changed it on his own or at the request of Mr. Barr. On the whole, I conclude that Mr. Albert changed his version at the request of Mr. Barr. The conduct of both of them was not acceptable.

PART VI

SPECIFIC CASES REFERRED FOR POSSIBLE PROSECUTION AND DISCIPLINARY ACTION

INTRODUCTION

1. In each of the incidents described in the chapters of this Part there has been activity by a member or members of the R.C.M.P. which constitutes, in our opinion, conduct which is either clearly illegal or which may likely be illegal. In Part I of this Report — the General Introduction — we repeated what we said in our Second Report as to how we define the phrase “not authorized or provided for by law” found in our terms of reference. We there set out various characteristics of what might be described as conduct “not authorized or provided for by law”. Included in our definition were acts which were (a) offences under the Criminal Code or under other federal or provincial statutes, (b) civil wrongs, (c) beyond the statutory authority of the R.C.M.P. or (d) not authorized by normal procedures within the R.C.M.P. We also pointed out that we did not intend to ignore the “moral and ethical implications” of conduct.

2. The chapters which have been included in this Part are reported on separately from those in Parts IV and V on the basis that the chapters in this Part involve conduct by members of the R.C.M.P. which might be offences under the Criminal Code or under other federal or provincial statutes, exclusive of the disciplinary sections of the R.C.M.P. Act (the latter are found in Part V). Thus, although the conduct may concurrently fall within categories (b), (c) or (d) set out in the preceding paragraph, it is because the conduct may be within category (a) that our Report on it is included in this Part.

NOTE BY THE COMMISSIONERS

August 5, 1981

1. The reasons for our recommending a delay in publication of our Report as to situations which may possibly lead to criminal proceedings are stated in Part VIII, paras. 1-8. Those reasons apply to most of the chapters in Part VI, which the Government has decided not to publish at this time, as we recommended. They are entitled as follows:

Human Sources — Security Service

Specific cases of Access to and Use of Confidential Information Held by the Federal Government (Department of National Revenue)

Attempts to Recruit Human Sources

The Minerve Communiqué

Burning of a Barn

Removal of Dynamite

Operation Bricole

Operation Ham

Checkmate

2. However, our reasons for a delay in publication were intended to apply only to specific situations concerning which we heard evidence or to which we have reported on the basis of an examination of R.C.M.P. files. There are three chapters of Part VI which do not report on specific situations. Therefore our reasoning does not apply to them. They are entitled as follows:

Specific Surreptitious Entry Cases

Specific cases of Access to and Use of Confidential Information Held by the Federal Government (Other than D.N.R.)

Specific Mail Check Cases

These chapters are being published now.

3. Furthermore, our recent review of Chapter 11, entitled *Matters Concerning and Undercover Operative, Warren Hart* has reminded us that only some of the twelve specific topics reported on in that chapter give rise to the possibility of prosecution of a member of the R.C.M.P. Therefore the rationale for a delay in publication pertains only to the parts of the chapter reporting on those topics. The remainder of the chapter is being published now:

4. In addition there are some chapters that deal with events that have not so far been in the public domain. They are of a nature that, in our view, they should be dealt with in accordance with the procedures recommended by us in our Second Report, Part V, Chapter 8, paras. 31-38. It is possible that the result of the application of that procedure will be that the Attorney General of

Canada or the Attorney General of a province may decide that it would not be in the public interest to prosecute, or to make known any facts whatsoever. If such should be the case, it would obviously be undesirable that publication of any facts in this Report should prejudice such a decision. We shall say only that the facts as they are known to us relate entirely to the conduct of members of the R.C.M.P. and not in any way to that of senior officials of the government outside the R.C.M.P. or to that of Ministers of the Crown.

CHAPTER 1

HUMAN SOURCES — SECURITY SERVICE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 2

SPECIFIC SURREPTITIOUS ENTRY CASES

INTRODUCTION

1. During the course of our investigations and hearings a number of specific cases have been brought to our attention which involve either the surreptitious entry by members of the R.C.M.P. into premises occupied by someone else or the surreptitious interference by members of the Force with chattels owned by someone else. In this Part of our Report we discuss separately several of these cases. Such reports are found in Chapter 9 (Operation Bricole), Chapter 10 (Operation Ham), Chapter 7 (burning of a barn), and Chapter 8 (removal of dynamite)*.
2. In our Second Report, in Part III, Chapter 2, we discussed in considerable detail the evidence we had received with respect to the extent and prevalence of these practices. We also discussed in that chapter the various legal issues which arise with respect to the practices. We will not repeat here that discussion of the legal issues; rather, we shall briefly summarize some of the facts contained in the Second Report on this subject and make recommendations as to the procedure which we consider ought to be followed with respect to the facts reported by us.
3. From a large volume of cases containing the potential for a finding of activity "not authorized or provided for by law", we selected six as to which we received detailed evidence, i.e., those mentioned above as having been reported on separately. With respect to the remainder we have obtained from the R.C.M.P. factual information ranging from details of dates, names and places in some cases to purely statistical information in others. Under those circumstances we recommend a procedure which ought to be followed with respect to further investigations.
4. In Reason for Decision rendered by us on May 22, 1980, which are reproduced in full as Appendix "H" to our Second Report, we discussed circumstances in which "... the conduct concerning what [we] may report cannot, as described by the Commission, give rise to any criminal or disciplinary proceedings against any individual". We then described situations in which that might occur, of which four are applicable to the discussion of specific surreptitious entry cases which follows, as well as to the discussions of

* Those chapters are not being published at this time, for the reasons given in Part VIII relating to the Commissioners' Report as to specific situations that may give rise to prosecutions.

specific cases of access to confidential government information and specific mail check cases which are contained in Chapters 3 and 4 of this Part. Those four are where:

- (i) the Commission's evidence is as to the general nature and purpose of the activities but the Commission does not have any evidence of the names of participants or the particulars of any specific instances. There are a number of investigative techniques, the use of which by members of the R.C.M.P. may not have been authorized or provided for by law, which have been investigated by the Commission as to the "extent and prevalence" of the use of the technique without the Commission having obtained evidence of the particular cases in which over the years or decades the technique was used, or, consequently, of the identity of the individuals involved, whether members of the R.C.M.P. or not. To have done so in regard to the use of these techniques would frequently have been impossible, since no records were kept, or, if kept, records would no longer be available. Moreover, to try to reconstruct the individual situations would have required a much larger investigative and legal staff and would inevitably prove to be an exercise in futility;
 - (ii) the Commission's evidence is as to a general practice or system and the names of some participants but not all of them, and as to which even if the Commission has the names of some participants it does not have the particulars of any specific case so that the Commission is in no sense considering any specific "offence";
 - (iii) the Commission's evidence is as to specific acts in a specific case but not the names of the participants, or at least not all of them, and as to which none of the participants has given evidence;
 - (iv) the Commission has detailed evidence of the specific acts in a specific case, the names of all or some of the participants, and perhaps, but not necessarily, evidence as to exactly what all the participants did and the activities cannot be said to be a transgression of the Criminal Code or other statute law or of the law of tort or delict, or a major service offence under Section 25 of the R.C.M.P. Act. Nevertheless, if they occurred, they may be, in the opinion of the Commission, conduct which is "not authorized by law" in the sense that it is beyond the duties of a member so to conduct himself: i.e., if such conduct is not within the phrase "such security and intelligence services as may be required by the Minister" (quoting section 44(e) of the Regulations).
5. In dealing with the cases and the statistics, we consider it helpful first to make a distinction between the C.I.B. side of the Force and the Security Service, and then in the case of each of them to make a further differentiation between cases involving electronic surveillance and those which can be described as intelligence probes. With respect to intelligence probes, we do not propose to make a further division between those cases which solely involve entry into premises, and those which involve interference with chattels.

A. C.I.B.

(a) Surreptitious entries related to electronic surveillance

Summary of facts

6. Statistics provided to us by the R.C.M.P. show that for the period from 1963 to the coming into force of the Protection of Privacy Act on July 1, 1974, there were 3,419 installations of electronic listening devices. Those installations involved 1,118 entries. There is no indication how many of those entries were into buildings and how many into other places, such as automobiles. Nor is there any indication as to how many of the entries were made with the consent of a person entitled to give consent, such as consent by the manager of a hotel prior to occupation of a hotel room by the target.

7. For the period from July 1, 1974, to the end of 1979, the statistics on electronic surveillance are available through the Annual Reports tabled by the Solicitor General in Parliament and the Annual Reports tabled by the provincial attorneys general in their respective legislatures. However, those reports, while indicating the number of authorizations granted, do not contain statistics as to entries effected in carrying out the authorizations. Also, the reports filed by the provincial attorneys general cover all the applications by them with respect to all the police forces under their jurisdiction, without distinction between the R.C.M.P. and the other police forces.

8. For the reasons set out in Part III, Chapter 2, of our Second Report, we are satisfied that in all cases of surreptitious entry, without the consent of a person entitled to give such consent, for the purpose of installing, maintaining or removing an electronic listening device, a trespass occurred. That is so whether or not the entry took place pursuant to an authorization granted under the Protection of Privacy Act. We are further satisfied that prior to July 1, 1974, all such entries for the purpose of installing microphones took place pursuant to a policy of the Force. In Part III, Chapter 1 of this Third Report, we discussed the responsibility of those who formulated the policies.

Conclusions

9. We noted in our Second Report that the entries subsequent to July 1, 1974, were made pursuant to a legal opinion obtained from the Department of Justice. We do not fault either those formulating the policy or those carrying it out for any conduct which was in accord with legal advice from that source. We do not consider it appropriate that any action of a disciplinary or legal nature be brought by the government or the R.C.M.P. against any member of the Force who participated in the planning or execution of either an entry into premises or an interference with goods and chattels for the purpose of installing, maintaining or removing an electronic listening device, pursuant to such opinion. In Part X, Chapter 5, of our Second Report we recommended legislative amendments to clarify the legal position with respect to entries for the purpose of conducting electronic surveillance.

10. Although there may be cases in which those planning and participating in surreptitious entries took steps beyond what was reasonable for the installation,

maintenance and removal of the listening device, no such cases have come to our attention. In our view, the Attorney General of Canada, using the personnel of the Department of Justice, should review all the files in the possession of the R.C.M.P. which relate to such entries with a view to determining whether any such unreasonable conduct occurred. If, after such a review, the Attorney General of Canada considers that in any case the conduct discloses evidence of commission of an offence under the Criminal Code, that case should be referred to the appropriate provincial attorney general.

(b) Intelligence Probes

Summary of facts

11. In Part III, Chapter 2, of our Second Report we discussed the difficulties we experienced in obtaining information relating to intelligence probes in criminal investigations. In response to questions sent to divisions of the Force, for the purpose of compiling evidence to be presented to us, it was disclosed that the following intelligence probes occurred:

"D" Division (Manitoba)	2
"E" Division (British Columbia)	402
"F" Division (Saskatchewan)	1
"K" Division (Alberta)	9

In our Second Report we pointed out the anomaly of there being no intelligence probes reported from Ontario or Quebec. We also noted that no records were kept in any of the divisions and that all information provided was volunteered from the memory of members.

12. We analyzed the reasons for the huge discrepancy in the figures from British Columbia, and the explanations provided in the subsequent report prepared by the Deputy Attorney General of that Province for his Attorney General. The British Columbia Department of the Attorney General conducted an investigation of the 402 cases reported for that province. The Deputy Attorney General then recommended that there be no prosecutions of those involved in the entries, even in four cases in which chattels had been surreptitiously removed. The Attorney General concurred with that recommendation.

Conclusions

13. We consider that in the cases reported from Manitoba, Saskatchewan and Alberta, the files should be made available to the respective attorneys general of those provinces for investigation and disposition as each considers appropriate. In all of the cases reported, including those from British Columbia, we think that the Commissioner of the R.C.M.P. should examine the facts to determine whether the conduct of the members involved was unreasonable, having regard to Force policy at the time, with a view to determining whether disciplinary action ought to be taken against the members.

B. SECURITY SERVICE

(a) Surreptitious entries related to electronic surveillance

Summary of facts

14. The statistics provided to us by the R.C.M.P. Security Service in relation to electronic eavesdropping do not enable us to determine the extent to which surreptitious entries were necessary to carry out that eavesdropping. We were told in evidence that from 1971 to February 1978 there had been 580 installations by the Security Service, 223 of long-term listening devices and 357 of short-term devices, but that the number of entries with respect to those installations could not be determined. The only evidence before us was that the R.C.M.P. files disclosed that with regard to the 223 long-term devices there had been 55 instances of entry. Some of those entries may not have constituted trespass because the consent of a person entitled to give such consent may have been obtained.

15. Since the coming into force of the Protection of Privacy Act on July 1, 1974, a warrant from the Solicitor General has been required for electronic eavesdropping by the Security Service. The Security Service has detailed records of all electronic surveillance installations both before and after July 1, 1974. The Annual Reports tabled by the Solicitor General in Parliament, pursuant to section 16(5) of the Official Secrets Act, disclose the number of warrants issued as follows:

1974 —	339
1975 —	465
1976 —	517
1977 —	471
1978 —	392
1979 —	299

As we pointed out in our Second Report, those annual figures are somewhat misleading because they include renewals from the previous year.

Conclusions

16. As with surreptitious entries in connection with electronic eavesdropping on the criminal investigation side, we consider that both before and after July 1, 1974, any entries effected without the consent of a person entitled to give consent constituted trespass, and any interference with chattels constituted a trespass to chattels. Again, it is our opinion that no action should be taken by the government or the R.C.M.P. against any of the persons planning or participating in such entries, by reason only of the trespassory aspects. We take this position because, prior to July 1, 1974, all such entries were effected pursuant to R.C.M.P. policy, and subsequent to July 1, 1974, pursuant to authorization by the Solicitor General of Canada who fully expected such entries to take place in the case of microphone installations. Moreover, the R.C.M.P. knew that the view of the Department of Justice, expressed when the legislation was being prepared, was that such entries were lawful even without express provisions in the legislation, by virtue of section 26(2) of the Interpre-

tation Act. In our Second Report, we disagreed with that view, but it remains a fact that all concerned acted upon that advice and should not be faulted for having done so. In Part V, Chapter 4, of our Second Report we recommended legislative amendments to clarify the legal position with respect to entries for the purpose of conducting electronic surveillance.

17. We think that the Department of Justice should examine all available files of the Security Service which contain details of such entries with a view to determining whether there was any conduct on the part of the participants which went beyond what was reasonably necessary to install, maintain and remove the electronic devices. If, in the opinion of the Attorney General of Canada, any such conduct constituted a criminal offence, we recommend that he proceed in accordance with the system which, in Part V, Chapter 8 of our Second Report, we recommended be established on an interim basis, pending federal-provincial discussions on the matter. In addition, if any unnecessary or unreasonable damage was inflicted on the property of any person, we recommend that the person be compensated by the Government of Canada for any such damage, as set out in Part V, Chapter 4, of our Second Report.

(b) Intelligence Probes

Summary of facts

18. The Security Service provided us with the details of 47 entries, relating to 34 targets. Two of the entries were not what are commonly referred to as intelligence probes; rather, they were preparatory to the installation of an electronic listening device. Two of the cases have been reported on separately in this Part but are not being published at this time. One aspect of a third case has been reported on separately in Part IV. It concerns the destruction of an article. We have provided to the Clerk of the Privy Council, on behalf of the Governor in Council, the details of the 47 entries as they were given to us by the R.C.M.P. We have also identified for the Clerk which of the cases were those described in our Second Report.

Conclusions

19. It is our view that details of all these Security Service intelligence probes should be provided to the Attorney General of Canada who, using the personnel of the Department of Justice, should investigate them with a view to determining whether there is evidence that any criminal offences may have been committed. If, in his opinion, there is any such evidence we recommend that he proceed in accordance with the system which, in Part V, Chapter 8 of our Second Report, we recommended be established on an interim basis, pending federal-provincial discussions on the matter.

C. GENERAL CONCLUSIONS

20. We have concluded that with respect to all surreptitious entries by both the C.I.B. and the Security Service, no action should be taken by the government or the R.C.M.P. against those planning or participating in such surreptitious entries merely by reason of the trespassory nature of the activity. We have come to this conclusion because such entries were conducted as a part

of Force policy and we do not consider it appropriate that any disciplinary or legal action be taken by the government or the R.C.M.P., against a member of the Force carrying out Force policy, for unlawful activity amounting only to a civil wrong. Earlier in this Report we expressed our views as to the responsibility of those who formulated the policies on behalf of the Force. In our Second Report we stated categorically that it is not acceptable for a member of a police force or of a security intelligence agency to consider that what he is doing is not unlawful merely because it involves the commission of a civil wrong. Every member of the Force and the security intelligence agency must be made aware of that immediately. We do not consider that in the future any such conduct should be excused.

21. However, we consider that any conduct by a member, whether on the C.I.B. side or the Security Service side, which went beyond what was reasonably necessary to accomplish Force policy should be examined by the Commissioner of the R.C.M.P. to determine whether disciplinary action should be brought against that member, and by the Attorney General of Canada to determine whether what the member did might have constituted an offence. If the Attorney General of Canada concludes that there is evidence of the commission of an offence we recommend that he proceed in the way we set out in Part V, Chapter 8 of our Second Report.

CONTINUED

5 OF 6

CHAPTER 3

SPECIFIC CASES OF ACCESS TO AND USE OF CONFIDENTIAL INFORMATION HELD BY THE FEDERAL GOVERNMENT

A. DEPARTMENT OF NATIONAL REVENUE

[This section of this chapter, consisting of paragraphs 1 to 8, is not being published at this time, pending the disposition of possible legal proceedings.]

B. UNEMPLOYMENT INSURANCE COMMISSION

Introduction

9. The policies and practices of the C.I.B. and the Security Service in obtaining access to data held by the Unemployment Insurance Commission (U.I.C.) and the extent and prevalence of the practice, were set out in Chapters 5 and 6 of Part III of our Second Report. Public and *in camera* hearings were held on this topic.

10. As was the case with access to Department of National Revenue data, the arrangements made with the U.I.C. by the C.I.B. and the Security Service were separate and distinct. We shall deal with the summary of facts separately but our conclusions will relate to both the C.I.B. and the security Service.

(a) C.I.B.

Summary of facts

11. All of the evidence that we received relating to the C.I.B. was statistical except to the extent that we were told the names of certain police forces and government agencies, both domestic and foreign, on whose behalf the C.I.B. had obtained information from the U.I.C. The names of those Forces and agencies are set out in Part III, Chapter 5, of our Second Report, as is the statistical data. That data discloses that from 1974 to April 1978 there were 1,623 requests from the C.I.B. for information. Many of those requests concerned offences related to the unemployment insurance programme, although the evidence before us did not disclose the precise number.

(b) Security Service

Summary of facts

12. The only evidence we heard as to specific cases involving the release of information to the Security Service by the U.I.C. was with respect to requests which had been made by Security Service Headquarters from the summer of 1973 to June 1978. During that period there were 1,337 such requests. There was no evidence as to how many of those requests resulted in a transfer of information.

(c) Conclusions and recommendations

13. In our Second Report we concluded that

... throughout the three decades since 1946, the R.C.M.P. has obtained information from the staff of the U.I.C. by means which... have violated the confidentiality provisions of the legislation.

14. We recommend that the relevant evidence in the transcripts of hearings and the exhibits filed be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

C. DEPARTMENT OF INDUSTRY,
TRADE AND COMMERCE:
THE INDUSTRIAL RESEARCH AND
DEVELOPMENT INCENTIVES ACT

Introduction

15. We heard no testimony with respect to this subject but there was filed with us an exhibit (Ex. N-1) containing a number of documents with respect to this relationship. We discussed the relevant portions of those documents in our Second Report, Part III, Chapter 5. What follows is also from documents found in that exhibit.

Summary of facts

16. The only case of which we are aware, in which the R.C.M.P. obtained access to information in the files of the Department of Industry, Trade and Commerce, where such information had been obtained by that department under the Industrial Research and Development Incentives Act, was described briefly in Part III, Chapter 5, of our Second Report. It occurred in 1974.

Conclusions and recommendations

17. We recommend that Exhibit N-1 be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigation,

including review of the appropriate R.C.M.P. files, as he considers necessary to obtain the details of the one incident described in the documents contained in that exhibit. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

D. DEPARTMENT OF NATIONAL HEALTH AND
WELFARE:
FAMILY ALLOWANCES AND OLD AGE SECURITY

Introduction

18. Again, with respect to this Department, all of the evidence is documentary and is found in Exhibit N-1.

Summary of facts

19. The documents in N-1 disclose that information was given to the C.I.B. by personnel in the Department of National Health and Welfare, apparently in contravention of the Acts and regulations governing family allowances, old age security and old age assistance. No statistical data was provided to us. However, as indicated in Part III, Chapter 5 of our Second Report:

... four cases were reported in which approaches were made by the Force to the Family Allowances Division other than in regard to the administration of the Family Allowances Act.

- (i) In an investigation of the abduction of a seven-year-old child, the approach was made to determine whether a new application had been made for family allowance in regard to the abducted child. The Department advised that no new application had been made. (The mere disclosure that an application had or had not been made would not be prohibited).
- (ii) In 1970 co-operation was received in regard to a murder investigation. No further details were given.
- (iii) A contact was made with the local office in an investigation under the Immigration Act. No further details were given.
- (iv) A request was made in a fraud investigation. It does not appear that any information was given out, the disclosure of which would be prohibited.

Conclusions and recommendations

20. We recommend that Exhibit N-1 be referred to the Attorney General of Canada, as well as the relevant parts of our Second Report, and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents reported to us. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

CHAPTER 4

SPECIFIC MAIL CHECK CASES

INTRODUCTION

1. In Part III, Chapter 4, of our Second Report we set out both the extent and prevalence of mail check operations on the C.I.B. and Security Service side and the legal issues involved in relation to such mail check operations. In discussing the extent and prevalence of the practices, we considered the Security Service and the C.I.B. separately. We shall make the same division here.
2. Evidence with respect to mail check cases was received by us in public and *in camera* in 1977 and 1978.
3. As the number of incidents of mail check operations, as disclosed to us by the R.C.M.P., exceed 1,000 for the period of 1970-77 alone, the focus of our inquiry into this practice was on its "extent and prevalence", not on the details of individual cases. Several specific cases were described to us in oral testimony, by way of examples of the circumstances in which the technique was used. Even in those cases time did not permit us to hear all of the relevant evidence.

A. SECURITY SERVICE

Summary of facts

4. The Security Service had three categories of mail check operations, under the code words Cathedral A, Cathedral B and Cathedral C. The categories were described in a Security Service memorandum (Ex. B-16) as follows:

Cathedral "A" — routine name or address check [recording in longhand information from the outside of envelopes]

Cathedral "B" — intercept (photograph or otherwise scrutinize by investigator) but do NOT open [the outside of envelopes was photographed]

Cathedral "C" — intercept and attempt content examination

5. The information provided to us by the Security Service disclosed that from November 1970 to the end of December 1977 there were 91 completed mail check operations, of which six were Cathedral A cases, 19 were Cathedral B cases and 66 were Cathedral C cases. Details as to the province in which each operation took place, the identification of the target, the date of the operation and the Security Service file number are all contained in a summary of the cases filed with us as Exhibit BC-3. Further details were provided to us by the

Security Service on all these operations and we have given the Clerk of the Privy Council, on behalf of the Governor in Council, those additional details. In addition, details of one case, the Omura case, are found in Volumes 8, 18 and 23 of the transcripts of our hearings.

Conclusions and recommendations

6. For reasons which are given in our Second Report, we are satisfied that, in each instance in which mail was opened by the Security Service, an offence may have been committed under section 58 of the Post Office Act. Similarly, for reasons given in that Report, in each of the Cathedral A and B cases it is less clear whether there was an offence pursuant to section 58 of the Post Office Act. In this latter regard we said in Part III, Chapter 4, of our Second Report, the following:

(a) Examining the exterior of an envelope (what the Security Service has called Cathedral 'A') might be unlawful if the length of time it is taken out of the mail stream results in its being "detained" or "delayed". Even if that were not so on the facts of most situations, it might be argued that a civil wrong is committed by interfering in the ownership of the article of mail, but this is doubtful. On balance, we do not believe that this investigative practice, if it does not involve removing the article from the mail stream for any significant length of time, can be said to be an activity "not authorized or provided for by law". This is particularly our view if the article of mail remains at all times in the control of a postal employee. Our view is the same as that of the Director of the Legal Service Branch of the Post Office, given in December 1977 . . .

(b) The same remarks apply to photographing the exterior of an envelope (what the Security Service has called Cathedral 'B').

7. We recommend that all the cases summarized in Exhibit BC-3 be referred to the Attorney General of Canada who should have members of the Department of Justice conduct such an investigation as he considers necessary, including a review of the R.C.M.P. files with respect to those cases. Upon completion of the investigation the Attorney General of Canada should determine, in each case, whether a prosecution is warranted under all the circumstances.

B. C.I.B.

Summary of facts

8. The criminal investigations side of the Force did not use a code name for mail check operations. It conducted operations similar to those which were carried out by the Security Service under the code names Cathedral A, B and C. In addition, the C.I.B. undertook controlled delivery of the mail, a system whereby the delivery to the addressee was made either by a member of the R.C.M.P., posing as a postal employee, or by a postal employee delivering it at a time pre-arranged with the R.C.M.P.

9. The statistics provided to us with respect to mail check operations for the years 1970-1977 disclosed that there were 954 mail check operations, of which

799 involved the opening of pieces of mail. However, these figures cannot be relied upon because of differences in interpretation, by those reporting at the division level, of the definition of "letter", "first class mail", "post letter" and "delivered".

Conclusions and recommendations

10. In the testimony before us on this subject, some details were given with respect to six operations. With regard to these six cases, we recommend that the evidence and the R.C.M.P. files with respect to them be referred to the Attorney General of Canada who should have members of the Department of Justice conduct such an investigation as he considers necessary. Upon completion of the investigation the Attorney General of Canada should determine, in each case, whether a prosecution ought to be launched against the persons involved.

11. We also recommend that the Attorney General of Canada should examine the foregoing statistics provided to us and the R.C.M.P. files upon which they are based and determine whether prosecutions ought to be launched.

C. GENERAL CONCLUSIONS

12. The volume of cases of mail check operations on the Security Service and C.I.B. side of the Force is overwhelming. We have discussed them only in the light of possible violations of the Post Office Act. In each case there may also have been a trespass to the item of mail interfered with. We do not make light of that and in our opinion it ought to be brought home very clearly to members of the R.C.M.P. and of the security intelligence agency that such an interference with other persons' property constitutes a trespass and is therefore unlawful. However, because mail check operations were clearly a policy of the Force, we do not consider that those who planned and participated in specific cases should be punished by virtue only of the trespass involved.

CHAPTER 5

ATTEMPTS TO RECRUIT HUMAN SOURCES

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 6

THE MINERVE COMMUNIQUÉ

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 7

BURNING OF A BARN

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 8

REMOVAL OF DYNAMITE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

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CHAPTER 9

OPERATION BRICOLE

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CHAPTER 10

OPERATION HAM

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 11

MATTERS CONCERNING AN UNDERCOVER OPERATIVE, WARREN HART

INTRODUCTION

1. Here we examine certain matters that arise from our inquiry into the use of Mr. Warren Hart as an undercover operative of the Security Service from 1971 to 1975.
2. Testimony was heard during public hearings held in 1980 on January 8, 9, 10, 15, 16 and 17, and April 22, 23, 24, 29 and 30. It is found in Volumes 143, 144, 145, 150, 151, 152, 178, 179, 180, 181 and 182. Testimony *in camera* was heard on April 30, 1980, and is found in Volume C92. In addition representations were made to us pursuant to notices given under section 13 of the Inquiries Act (Vols. C126 and C131).
3. Mr. Hart testified publicly before us, and we refer publicly to him in this Report, because his identity as a previous undercover operative of the R.C.M.P. had been disclosed by himself on television and admitted in the House of Commons and to the press by the Solicitor General, after Mr. Hart's own disclosure.
4. We inquired in depth into Mr. Hart's complaints, and other matters about which he did not complain but which were incidents in his career with the R.C.M.P. Certain issues he raised might not in themselves have merited the time devoted to hearings, but we considered others to be of substantial importance, either in themselves or as illustrations of policy problems.
5. One of the matters relating to Mr. Hart, his presence at a meeting held in December 1974 between the Honourable Warren Allmand and Roosevelt Douglas, is reported on in Part IV, Chapter 7. Another matter was his allegation made publicly that a murder had been committed. We interviewed Mr. Hart as to the extent of his knowledge of this matter and we immediately made a Special Report to the Governor in Council recommending that it be referred to the Attorney General of Ontario.

Summary of facts

6. In April 1971, at the request of the United States Department of Justice, Mr. Hart met Sergeant I.D. Brown of the R.C.M.P. in Washington, D.C. Mr. Hart understood from a member of the Department of Justice that the R.C.M.P. needed someone with expertise in infiltrating black radical organiza-

tions. After Sergeant Brown consulted with R.C.M.P. Headquarters in Ottawa, the decision was made that Mr. Hart would go to Canada to work at a salary of \$900 a month plus \$100 a month to cover the expenses of a monthly visit to his family in Baltimore. There was no discussion about the payment of Canadian income tax. Mr. Hart entered Canada and went to Toronto where he again met Sergeant Brown, who told him that his target was Roosevelt Douglas and that he was to attend black meetings to obtain information covering the future plans of black extremists. Mr. Douglas was then in jail but when he was released Mr. Hart became, in Mr. Hart's own words, "his chauffeur, his bodyguard and his confidant". His R.C.M.P. "handlers", who gave him instructions and debriefed him regularly, were Sergeant Brown and Constable Laird. Four or five months after his arrival Mr. Hart first met Inspector James S. Worrell, who, he understood, was the officer in charge of matters involving himself. In fact, it appears that Inspector Worrell, who was in Toronto, was at the time not really in charge, for Sergeant Brown was receiving instructions from Headquarters in Ottawa.

7. Later Mr. Hart's salary was increased to \$1300 a month. This occurred because Mr. Hart had returned to Baltimore in 1972, having decided not to continue to work for the R.C.M.P. Messrs. Brown and Laird went to see him there and offered him the increase together with insurance coverage and fringe benefits, as a result of which Mr. Hart agreed to resume his work in Canada.

8. What was the R.C.M.P.'s assessment of Mr. Hart's services? Chief Superintendent Begalki confirmed in testimony that in February 1973, he recorded that Mr. Hart was "sharp and intelligent" and that Mr. Begalki considered that the not inconsiderable faith Mr. Hart had in his own abilities made it possible to survive in a very dangerous milieu. As of 1973 Sergeant Plummer, who succeeded Sergeant Brown as Mr. Hart's principal handler, considered that Mr. Hart was performing his job well. As late as the fall of 1975 Sergeant Plummer thought so highly of Mr. Hart's usefulness that he wanted Mr. Hart to accompany Mr. Douglas on a trip across Canada. Inspector Worrell testified that Mr. Hart performed excellent work for the R.C.M.P. at times and that at other times his conduct was a matter of concern, but that generally speaking his efforts were quite good, especially in 1972 and early 1973. Inspector Worrell testified that he formed the opinion that Mr. Hart was "a sand lot thug", "an egomaniac", and a man whose ego was "giant-sized"; this opinion was based on reports he received, as Inspector Worrell did not deal with Mr. Hart personally.

9. We turn now to a discussion of the following specific issues:

- (a) The arrest and deportation of Mr. Hart in December 1971;
- (b) The entry of Mr. Hart into Canada initially, and his return to Canada after his deportation;
- (c) Surreptitious entry and reading mail;
- (d) The cache of firearms;
- (e) Kenora;
- (f) Mr. Hart's contacts with native people in British Columbia;

- (g) Taping of a meeting of the N.D.P. provincial caucus in British Columbia;
- (h) Mr. Hart's presence when Roosevelt Douglas met John Rodriguez, M.P.;
- (i) Mr. Hart's associations with the underworld;
- (j) The border incidents;
- (k) The decision to terminate Mr. Hart's employment;
- (l) The termination of Mr. Hart's employment;
- (m) Was Mr. Hart offered permanent employment?

Specific issues

(a) The arrest and deportation of Mr. Hart in December 1971

10. In December 1971, the R.C.M.P. decided, with Mr. Hart's concurrence, to have Mr. Douglas and Mr. Hart arrested, jailed and deported under the Immigration Act. It was intended that Mr. Hart would return to Canada a few weeks later, and he did in fact return in January 1972 to resume his work for the R.C.M.P.

11. According to Mr. Hart, he understood that the purpose of the plan to deport Mr. Douglas and himself was to enhance Mr. Hart's "cover" and to increase his credibility among black radicals. However, Security Service documentation at the time and the testimony of R.C.M.P. witnesses establish that there was a more urgent reason. Sergeant Brown testified that the plan to arrest Mr. Douglas and Mr. Hart was developed in order to defuse a plot to place a bomb at Sir George Williams University and to kill two professors there. In order to defuse the plot and "pull" Mr. Hart out of the situation it was decided that it was necessary to have him arrested and deported.

12. Sergeant Brown told us that the instructions given to Mr. Hart were that he was to admit to the arresting R.C.M.P. officers that he had overstayed his visiting privileges and had been a member of the Black Panther Party in the United States. Sergeant Brown says that he instructed Mr. Hart to be co-operative with the Immigration officer and admit that he had overstayed and had been a member of the Black Panther Party, but that there was no instruction given to admit to a criminal record. Sergeant Brown stated that Inspector Begalki authorized him to have Mr. Hart admit that he had been illegally in Canada as a visitor. It was not expected that Mr. Hart would disclose to the Immigration officer conducting the inquiry that he had come into Canada to work for the R.C.M.P. That would have been quite contrary to the willingness of the Force to admit the identity of a source. Sergeant Brown testified that he expected that if Mr. Hart were asked whether he had been employed in Canada, he would not tell the truth.

13. Pursuant to the plan previously described, Mr. Hart and Mr. Douglas were arrested on December 8, 1971, in Toronto. According to Mr. Hart, Sergeant Brown told him that there would be an Immigration Inquiry, and that he was to tell the inquiry officer about his background and his arrest record, and that he "was a subversive in Canada" and make himself appear to be as

bad as possible. Mr. Hart testified that the record of arrests which he disclosed to the inquiry officer had in fact been the result of his being arrested during demonstrations in which, to maintain his cover while he was an undercover agent with the F.B.I., he had participated. Mr. Hart told the inquiry officer that he had been convicted of assault and battery and possession of a firearm, but he claimed to us that he had not in fact been so convicted. He told us that he had told the inquiry officer that he had been convicted in order to make himself look bad so as to ensure his deportation. He also admitted to the inquiry officer that he had come to Canada to stay, even though he had entered Canada as a visitor. As a result he was ordered deported, and was driven to the international border. By that time he had spent five days in custody. He was ordered deported on the ground that, contrary to section 18(1)(e)(vi) of the Act, he had entered Canada as a non-immigrant and remained, said the order, "after ceasing to be a non-immigrant and to be in the particular class in which you were admitted as a non-immigrant".

14. Mr. Hart understood that the inquiry officer did not know of his arrangements with the R.C.M.P. and was being misled, but that a senior officer in the Immigration Department knew what was going on. Chief Superintendent Begalki testified that, to the best of his recollection, Immigration officials were aware of the plan, but that he does not know whether the inquiry officer knew of it. Mr. Begalki told us that he expected that the inquiry officer would know all the facts, including Mr. Hart's association with the R.C.M.P. Mr. Begalki stated that the senior Immigration official with whom he discussed the matter led him to believe that he "would communicate on a parallel line with his people". Mr. Begalki also told us that he believes that the senior Immigration official felt that the facts of the deportation procedure would be communicated upward in the Department and that the Minister would "remove the order".

15. The senior Immigration official did not testify on this matter but was interviewed by our counsel. He stated that he was fully briefed by the R.C.M.P. in late November or early December 1971 as to the past and proposed activities of Mr. Hart for the R.C.M.P. He knew of the plan to deport Mr. Hart and Mr. Douglas. The plan was not documented, but the need to defuse the plans to kill two university members by deporting Mr. Douglas and Mr. Hart was explained in detail on December 3, 1971, by Assistant Commissioner Parent in a letter to the senior Immigration official. That official said that he is fairly certain that the inquiry officer was briefed before the Immigration hearing. The inquiry officer was interviewed by our counsel after all our hearings and stated firmly that he did not know of Mr. Hart's involvement with the R.C.M.P. or of the plan to have Mr. Hart deported. He said that he first knew of Mr. Hart's involvement with the R.C.M.P. only recently when this matter appeared in the press. We have no reason to doubt his statement.

16. According to a memorandum dated February 24, 1978, from the Deputy Minister to the Minister of Manpower and Immigration, the senior Immigration official

recalls that the proposed line of action was discussed and agreed to with Senior Management and the Minister, the Honourable Otto Lang.

However, there is absolutely no other documentary evidence that supports that statement and we do not accept it.

17. From our counsel's interview with the senior Immigration official it would appear that that official was generally aware that the R.C.M.P. were party to the practice of having foreigners present in Canada on security intelligence work from time to time, even though the R.C.M.P. did not advise Immigration every time Mr. Hart entered Canada.

18. According to a memorandum from the Deputy Minister of Manpower and Immigration to his Minister, dated February 21, 1978, Superintendent Chisholm and Chief Superintendent Begalki

advised officials of this Department that Hart was providing information to the RCMP on Roosevelt Douglas and other black extremists in Canada

and that one of the two Immigration Department officials so advised

recalls that early in 1972 John Starnes, Director General, Security Service, did in fact brief the ADM Immigration who later briefed the Deputy Minister and Minister.

In another memorandum dated February 24, 1978, the Deputy Minister advised the Minister that, according to the same senior official, Mr. Starnes' visit to the Immigration Commission followed the receipt in May 1972 of Mr. Hart's application for temporary admission to Canada to study at Atkinson College in Toronto. The memorandum continued:

As far as [the senior official] can recall, Mr. Starnes requested that our Commission refrain from taking enforcement action against Mr. Hart for "at least two weeks" as he was engaged in a number of sensitive and important matters.

19. On November 5, 1976, the Director General, Recruitment and Selection Branch, Canada Immigration Division, wrote to Mr. Hart as follows:

I have been asked to reply to your letter of October 3, 1976, referred from the office of the Prime Minister, concerning your desire to be admitted to Canada for permanent residence.

I have noted with interest the contents of your letter. On reviewing our file, however, I note that you were deported from Canada on December 9, 1971, and at that time you admitted to a conviction in the United States in 1953 for assault and battery. As assault and battery is considered a crime involving moral turpitude, it places you within a statutory prohibited class, paragraph 5(d) of the Immigration Act.

In view of the above, I am sorry to have to tell you that your admission to Canada either as an immigrant or non-immigrant (visitor) is prohibited and we are, therefore, unable to accede to your request.

(Ex. Q-11.)

Mr. Hart denies that he was in fact ever convicted of such an offence.

Conclusion

20. We raise no legal issues in regard to this episode. Our purpose in narrating it is to establish as clearly as possible what occurred, as this has a bearing on Mr. Hart's immigration status.

- (b) The entry of Mr. Hart into Canada initially, and his return to Canada after his deportation

[This section, consisting of paragraphs 21 to 24, is not being published at this time, pending possible legal proceedings against a member of the R.C.M.P.]

- (c) Surreptitious entry and reading mail

25. Mr. Hart told us that on one occasion he entered a friend's apartment without his knowledge in order to obtain access to some mail which the friend had received. [The balance of our Report on this matter, consisting of the remainder of paragraph 25 and paragraph 26, is not being published at this time, for reasons, given in Part VIII, relating to the possibility of prosecution of a member or members of the RCMP.]

- (d) The cache of firearms

[This section of this chapter, consisting of paragraphs 27 to 34, is not being published, pending possible legal proceedings against members of the R.C.M.P.]

- (e) Kenora

35. Mr. Hart accompanied Mr. Douglas to Kenora, Ontario in 1974 when Anicinabe Park at Kenora was occupied by some Indians and the Security Service thought that an attempt was being made to associate the native Indian cause with the Black cause. In his testimony Mr. Hart denied having given instruction to the native people on the manufacture of bombs, although he said that the general idea of bombs was discussed. He said that he met "several so-called Indian leaders" at Kenora and was introduced as "the General, the one who could instruct them in the expertise of weaponry and demolition", and that he "learned of a cache of weapons that had been brought into Kenora for the next uprising that they were going to have". He denied having given any advice in Kenora as to how to fabricate bombs. He denied having, at Kenora or anywhere else in Canada, supplied anyone with weapons, or having counselled anyone as to how to procure bombs, grenades or other explosives.

36. Mr. Hart testified that he does not recognize the name Donald R. Colborne of Thunder Bay. Mr. Colborne is a lawyer in that city. In January 1979, Mr. Colborne made a statutory declaration in which he stated that on or about June 30, 1975, he met a man who was accompanying Roosevelt Douglas. From the facts given by Mr. Colborne it is evident that the man, whom he knew as "the General", was Mr. Hart. According to Mr. Colborne, the man "several times stated that he intended to steal weapons from persons in Thunder Bay", and "Boxes of grenades and other military-style weapons were referred to". Mr. Colborne says that the man "tried to incorporate me into his plan by enquiring if I would provide a safe place to cache the weapons after they had been stolen". Mr. Colborne says that he "declined to do so". Mr. Colborne says also that he does not know whether or not any weapons were actually stolen by "the General". We did not call Mr. Colborne as a witness. We assumed that if he were to testify, he would say what he said in his

statutory declaration. We did ask Mr. Hart about Mr. Colborne's allegations. Mr. Hart denied having indicated in Thunder Bay that he intended to steal weapons or explosives, or having asked about a safe place to hide explosive devices or weapons in Thunder Bay.

37. Sergeant Plummer confirmed that Mr. Hart's instructions were that, in order to "get next to" the targets, he was, with the R.C.M.P.'s approval, to claim to be an expert in demolition and weaponry.

Conclusion

38. Neither in the testimony nor in our review of the R.C.M.P. files concerning Mr. Hart is there any basis to question Mr. Hart's account of the events. Even if Mr. Colborne's allegations are accurate, Mr. Hart's words and conduct would not amount to offences.

- (f) Mr. Hart's contacts with native people in British Columbia

39. Mr. Hart acknowledges that, while accompanying Roosevelt Douglas to Vancouver, British Columbia, he met one Gary Cristall. Mr. Cristall swore an affidavit in November 1978 in which he stated that he met Mr. Hart, whom he knew as "Clay Hart" and "the General", in the spring of 1975, and that in August 1975 he travelled with Mr. Hart and Roosevelt Douglas, in Mr. Hart's automobile, from Vancouver to the Mount Currie Indian Reserve. There, he said, during discussions with "several native persons, including Mount Currie band members and members of the American Indian Movement (A.I.M.) concerning fishing and hunting rights and land claims", Mr. Hart "claimed that he had American military experience as a paratrooper and that he was an expert in explosives". Mr. Cristall stated that Mr. Hart said he

could provide unlimited supplies of high quality military equipment, including AK-47 automatic rifles, dynamite and plastic explosives

and that he

volunteered to train the native people that he met at Mount Currie in the use of dynamite and other types of explosives.

We did not call Mr. Cristall as a witness. He was interviewed by one of our investigators and we reviewed the transcript of the interview. We also read a short chapter from a book by Richard Fidler, "R.C.M.P.: The Real Subversives", which Mr. Cristall told our investigator was based on his experience with Mr. Hart. From all this it was clear that Mr. Cristall, if called to testify, would not be able to go beyond what he stated in his affidavit. Mr. Hart testified that, while he had met Mr. Cristall, the latter was not at the Mount Currie Indian Reserve when Mr. Hart and Mr. Douglas were there. The contradiction between the two is of no importance to the issue whether Mr. Hart, as an agent of the R.C.M.P., did anything that was unlawful. Assuming everything in Mr. Cristall's affidavit to be true, there is nothing unlawful in what he alleges Mr. Hart said at the Reserve. It thus becomes immaterial whether Mr. Hart was accurate or not when, in his testimony, he told us that he did not meet Mr. Cristall at the Mount Currie Indian Reserve.

40. At the Reserve Mr. Hart discussed training Indian people at two proposed campsites, but the camps were not set up. Mr. Hart said that they did not have the time to have any discussion about weapons and denied that he told any Indians that he could provide unlimited supplies of high quality military equipment, including AK-47 automatic rifles, dynamite and plastic explosives. According to Mr. Hart, during this western trip Corporal McMorran debriefed him in Regina and Sergeant Plummer met him in Vancouver. Sergeant Plummer, however, denied that he travelled at all in connection with that trip of Mr. Hart.

Conclusion

41. Neither in the testimony nor in what is alleged in the affidavits is there any indication that Mr. Hart committed an offence or that there was any conduct by the R.C.M.P. members that is open to criticism.

(g) Taping of a meeting of the N.D.P. provincial caucus in British Columbia

42. Mr. Hart testified that Sergeant Plummer and Corporal McMorran knew in advance that Mr. Hart would be attending a meeting between Mr. Douglas and members of the British Columbia provincial caucus of the New Democratic Party.

43. Mr. Plummer stated that he has no memory of a recording of such a meeting but remembers that the meeting was reported on. In later testimony he said that he possibly did know, in advance, of the proposed meeting. He said that if he had known in advance that Mr. Hart was going to be present at such a meeting he, Plummer, would have had "no compunction" about Mr. Hart being present. He left any ethical questions arising from tape recording Ministers and political parties to his superiors.

44. Mr. McMorran testified that Mr. Hart recorded the meeting openly, with a standard tape recorder on the table, and that it was simply a tape of the speech made by Mr. Douglas. Mr. McMorran confirmed that he was aware in advance that Mr. Hart was going to attend the meeting. It was Mr. McMorran's understanding that the meeting would not be private.

Conclusion

45. There is no evidence that Mr. Hart committed any offence. Moreover, the evidence indicates that the recording was made openly. We consider that there is nothing in his conduct or that of members of the R.C.M.P. that is open to criticism.

(h) Mr. Hart's presence when Roosevelt Douglas met John Rodriguez, M.P.

46. Mr. Hart says that Sergeant Brown knew in advance that Mr. Hart was going to be present at a meeting between Mr. Douglas and Mr. John Rodriguez, a Member of Parliament.

47. Sergeant Plummer, who was Mr. Hart's handler from the summer of 1973 until November 1975, testified that he did not authorize a taping of a conversation between Mr. Douglas and Mr. Rodriguez. He remembers only seeing the name of Mr. Rodriguez in a report.

48. Corporal McMorran was one of Mr. Hart's handlers from November 22, 1974, to the end of 1975. He testified that he does not recall whether Mr. Hart reported having taped Mr. Rodriguez, and he testified that he was positive that Mr. Hart did not give any such tape to him. However, Mr. McMorran did know in advance that Mr. Hart was going to be driving Mr. Douglas and Mr. Rodriguez. Mr. McMorran testified that he believes that Mr. Hart indicated that there was nothing noteworthy to report.

49. Mr. Hart testified that the recording was made with apparatus that was built into his car. But Mr. McMorran testified that the meeting with Mr. Rodriguez took place in 1975 and that there was no recording equipment in the car Mr. Hart had during that year.

Conclusion

50. No offence was committed because Mr. Hart must be considered to have been a party to the conversation, and his consent to the taping prevented it from being unlawful. However, we note that he was present at the meeting between Mr. Douglas and a Member of Parliament without the Solicitor General being notified, even after the event, that an R.C.M.P. undercover source had been present and had reported to the R.C.M.P. on the meeting. As with the meeting between Mr. Douglas and Mr. Allmand (the more so in the latter case because Mr. Allmand was the Minister who reported to Parliament concerning the R.C.M.P.), we consider it unacceptable that members of the R.C.M.P. should allow that to happen.

(i) Mr. Hart's associations with the underworld

51. Mr. Hart necessarily developed a "cover" story to explain the fact that he had money. As he had met an underworld figure while in jail in Toronto awaiting deportation, Mr. Hart testified that his R.C.M.P. handlers decided that he should develop an apparent connection with the underworld. Mr. Hart claimed to have reported to his R.C.M.P. handlers all the requests that underworld figures put to him. He told us that he did not carry out these requests, and that his handlers instructed him not to participate in anything that was unlawful. Mr. Hart asserted that his R.C.M.P. handlers knew of his use of his association with criminal elements as a cover, and that his handlers did not tell him to cease such association or that he was not following instructions.

52. Sergeant Brown testified that Mr. Hart was never involved in criminal activities, and that Mr. Brown had authorized Mr. Hart's association with the criminal whom he had met while in jail in order to promote Mr. Hart's "cover" by developing an apparent explanation for Mr. Hart's income. Corporal Laird, who backed up Sergeant Brown as Mr. Hart's handler from December 1971

until July 1973, told us that he knew of no criminal activities of Mr. Hart other than the border incident (if, we might add, it is in any way criminal).

53. On one occasion, after a mail robbery in Toronto, radicals turned over some cheques to him, and he gave them to Mr. McMorran. He was criticized by the R.C.M.P. for having received the cheques. A similar incident occurred with regard to stolen credit cards, and he was again criticized for receiving them. His handlers did not want to run the risk of having to expose Mr. Hart's true identity by his being called as a witness in any criminal prosecution.

54. Chief Superintendent Begalki testified that at a meeting in Ottawa in February 1973 he told Mr. Hart in detail that he "must refrain from getting involved with criminal intelligence and that if he followed these instructions and guidelines that employment would probably be much longer than if he got involved in any criminal intelligence collection with prosecutions following et cetera".

55. Mr. McMorran testified that, other than the border incidents and the matters of the stolen cheques and credit cards which Mr. Hart received and turned over to his handlers, he knew of no "other" criminal activity in which Mr. Hart was involved. Mr. Brown testified that Mr. Hart had a particular dislike for drugs, and therefore he expressed doubt that Mr. Hart would ever become involved with illicit drug traffic unless as a pretext for a job he was working on.

56. Inspector Worrell acknowledged that Mr. Hart's cover, to provide an apparent explanation for his income, was his association with Mafia types. However, Inspector Worrell told us that he thought that Mr. Hart "at times expanded beyond the cover role unnecessarily". As of March 1974 Inspector Worrell felt that Mr. Hart had co-operated in regard to his instructions to keep the criminals at arm's length. Then Mr. Hart was reprimanded for having received the stolen cheques although he had been told to "stay clear and stay away", but Inspector Worrell acknowledged that the reprimand was given simply because he had become involved; there was no suggestion that Mr. Hart was involved for personal reasons or motives, but rather his object was to bring them to his handlers.

57. Inspector Worrell told us that he had had the feeling that Mr. Hart was not playing square with the R.C.M.P. at all times. However, as Mr. Hart was handled by Headquarters and was not under Mr. Worrell's control in Toronto, Mr. Worrell did not have "the contact". Mr. Worrell said his attitude was based on instinct and not on facts. He testified that he began to have these feelings in or about 1973 — "some time around the cheque incident or the Italian crossing". (We note that the "Italian crossing" — the border incident — was in May 1973; the cheque incident was in January 1975).

58. Mr. Hart's aggressiveness about reporting intelligence concerning criminal activities — a characteristic that, as we have observed, concerned his handlers because it made his exposure more possible — was evidenced by a September 25, 1974 memorandum for file, by Sergeant Plummer (Ex. Q-23). It recorded that another Canadian police force had been receiving criminal

information from Mr. Hart, without his expecting remuneration, for a period of five months, and that the officer of the other police force reported that Mr. Hart

claimed to be extremely frustrated in the manner in which we treat criminal info. that he comes across in the course of his security service duties and expressed a genuine interest in helping to rid the city of the undesirable element.

A brief prepared for us by the R.C.M.P. on April 18, 1978, stated:

It had been established that Hart was a most difficult source to handle and failed to follow direction and accept guidance. It was agreed that Hart should claim to have criminal associations, to account for his life style, but it was never intended that he should cultivate them. Hart was repeatedly told not to become involved in any criminal activity, instructions he chose to ignore. Hart did associate with the criminal element, and on at least four occasions, reported to his handlers criminal matters, none of which resulted in criminal prosecutions.

Efforts were made to use this intelligence for criminal prosecution purposes, but this was never possible, as Hart became too close to the activity and would have been exposed if prosecution had been initiated. All handlers of Hart identified that he could not be relied upon and was frequently becoming involved in activities he was told not to become involved in, and was not always truthful.

This paragraph, we think, captures the essence of what was evidently felt by Security Service officers such as Inspector Worrell and Assistant Commissioner Sexsmith. We have no doubt that they were genuinely concerned and exasperated by Mr. Hart's apparently unrepentant willingness to collect criminal intelligence and thus run the risk of his identity being exposed. We believe that their concern in this regard was an honest and genuine one, and we refrain from passing judgment on whether they were right or not.

59. We do not, however, agree that the testimony before us, and the files we have examined, support the following statement in the foregoing brief: "Hart was repeatedly told not to become involved in any criminal activity, instructions he chose to ignore". If that statement implies that he committed crimes, it is an inference which is not supported by the evidence.

60. We also disagree with the brief's statement that "Hart did associate with the criminal element". That statement appears to imply that such "association" was contrary to instructions and that all he was supposed to have done was to "claim to have criminal associations. . . but it was never intended that he should cultivate them". (our emphasis). He was permitted to "associate" with such people, and his doing so was not contrary to instructions.

Conclusion

61. We are satisfied by the testimony and our review of the R.C.M.P. files that Mr. Hart's association with underworld figures was generally approved of by his R.C.M.P. handlers as a suitable "cover" for his otherwise inexplicable station in life. It is evident that from the beginning, or at least from 1972

onward, at least one R.C.M.P. officer (Inspector Worrell) disapproved of the cover, and that, at least toward the end of Mr. Hart's association with the Force, Inspector Worrell was joined by others in being displeased by some of Mr. Hart's activities arising from this association. However, we are satisfied that their concern was not that he might be performing criminal acts, but that his coming into possession of evidence of crimes committed by others and his desire to deliver the evidence to the R.C.M.P. risked his true identity and thus his usefulness to the Security Service.

62. As we have indicated, we do not find any facts at all that show that Mr. Hart committed any offence in regard to these associations.

(j) The border incidents

63. One of the requests Mr. Hart received from his underworld acquaintances was to smuggle an underworld figure across the border into the United States. The resulting events occurred on May 18, 1973. Mr. Hart told us that, before driving the person to the border, he tried to contact his R.C.M.P. handlers, but without success. Therefore, he stated, he wrote a note on a piece of stationery which said, in effect, that he had a man in the trunk of his car. The note, which was later produced as an Exhibit (Ex. Q-26), bore the words: "Please let me speak to someone in charge" and "I have a man in the trunk". He then drove to a point near the border at Niagara Falls and the man got into the trunk. When Mr. Hart reached the border he passed the note to an American official and told him to read it. The official then opened the trunk and discovered the passenger. During questioning, Mr. Hart asked the American officials to telephone Sergeant Brown in Toronto. They did, and the result was that Mr. Hart was freed and returned to Toronto.

64. Mr. Hart's account of this matter is verified by independent documentary evidence, consisting of a report of an investigation conducted within the Immigration and Naturalization Service of the United States Department of Justice. No reference was made to this document at the time of our hearings into this matter because, although we had access to it, we did not have permission from the United States agency in question to refer to it. The R.C.M.P. have, since our last hearings into the matter, communicated to us that "the American authorities have now declassified the material", subject to certain deletions, and "have requested that the report be restricted to *in camera* hearings". From this we infer that the American authorities have no objection to our quoting from the report in our Report to the Governor in Council but that they would have objection to its publication. Consequently we would quote from it if there were any need to do so, but not for publication. However, we think that it is not necessary to quote from the report, and that it is sufficient to state our conclusion, namely, that Mr. Hart's account is corroborated by the report in all material respects.

65. In a memorandum dated March 3, 1978, the Deputy Minister of Manpower and Immigration gave advice to his Minister as to whether Mr. Hart "had been engaged in smuggling aliens (in particular, a Mr. Juan Ferdinando Melito) across the Canadian/U.S. border", that being a question which had

been put to the Solicitor General in the House of Commons on February 27, 1978. The memorandum recorded that two letters had been sent to Mr. Blais on February 28 and 29, based on file review. The memorandum then recorded that the Acting Director of the Intelligence Division of the Immigration Commission had been informed by the R.C.M.P. that

- On May 18, 1973, Hart attempted to smuggle Melito into the U.S.A. at Niagara Falls. Melito had been secreted in the trunk of Hart's automobile.
- U.S. Immigration officials discovered Melito in Hart's automobile. A "fuss" ensued until Hart was able to make telephone contact with his "handlers". The U.S. authorities then permitted Hart to proceed; Melito was turned back to the Canadian side.

This information was, of course, wrong and thoroughly misleading. We do not know whether the Chief Superintendent who provided the information knew the true facts, or whether he accepted as true what some other member of the R.C.M.P. had told him. It was equally misleading to state, in an Aide-Mémoire that accompanied one of the letters to Mr. Blais that "source attempted to smuggle an illegal alien into the U.S. in May 1973" as "support" for the "contention" that he "may well have been involved with the criminal element in Toronto for personal gain".

66. The memorandum also recorded that the Chief Superintendent "indicated that Hart had smuggled an Italian National, one Attilio Agostino, into the U.S.A. from Canada in 1971". The information in the R.C.M.P.'s file shows that too is a misleading statement. The file shows that on August 2, 1973, Sergeant Plummer reported to Headquarters on this matter (Ex. Q-23). He reported an interview with Mr. Hart, conducted by American officials, and he referred to a "brief" that the R.C.M.P. had received from an American agency (which we have read). His conclusion at that time, which in our view is supported by the American "brief", was that Mr. Hart's account was factual. The story told by Mr. Hart, essentially, was that he had carried Agostino across the border to the U.S.A. at Windsor in March 1971, but that this had been done with the full knowledge and approval of United States officials at the border, who hoped thereby to further an important investigation into narcotics. However, it is not possible for us to be unequivocal about this matter, for the information from the American agency which is on the R.C.M.P. file is based on a report made before the conclusion of the investigation by the American authorities.

Conclusion

67. We are satisfied that Mr. Hart did not "attempt to smuggle an alien" into the United States in May 1973, and that the evidence on the R.C.M.P. file tends to support Mr. Hart's contention that what he did in 1971 was not "smuggling" because it was done in co-operation with an American agency.

(k) The decision to terminate Mr. Hart's employment

68. On October 31, 1975, the decision to terminate Mr. Hart's employment was made at a meeting of Inspector Begalki, Inspector Mumby, Inspector

Worrell and Assistant Commissioner Sexsmith. Sergeant Plummer, who was Mr. Hart's handler from the summer of 1973 until the termination, said that the three major reasons for the termination were probably the border incident, the Allmand incident and the cheque incident. But a written report made in 1975 by Corporal Payette, reviewing the history of the relationship of Mr. Hart and the Security Service, did not refer to the Allmand incident as a consideration in deciding to dismiss Mr. Hart. Inspector Worrell testified that the Allmand incident was *not* one of the reasons for the decision to terminate. Sergeant Plummer testified that he was called to account for the Allmand matter and had to chastise Mr. Hart, but then retracted that evidence. He did, however, record in January 1975 that he had reprimanded Mr. Hart concerning the cheque incident.

69. Sergeant McMorran testified that in September 1975 the Department of Immigration discovered the illegal presence of Mr. Hart in Canada and on September 11 notified Sergeant McMorran, who in turn notified Headquarters. As a result, Mr. Sexsmith instructed that Mr. Hart leave Canada voluntarily in order to avoid arrest; a decision would then be taken as to what should be done.

70. Inspector Worrell explained that one reason for the termination related to Mr. Hart's abiding by directions given by his handlers. He said that a notion developed at Headquarters that when Mr. Hart was out of the country, activity by targets seemed to quieten down, and the people at Headquarters wondered "whether this was a sort of self-perpetuating thing that we were in". A second reason given by Inspector Worrell for the termination was that there was pressure from the Department of Immigration. According to Inspector Worrell, it was this that finally caused the decision to be made. The risks involved if Mr. Hart were arrested and the arrest became public were a matter of concern.

71. Chief Superintendent Begalki acknowledged that one of the reasons for reviewing Mr. Hart's status in the fall of 1975 was pressure on the R.C.M.P. from the Department of Immigration. There was an immediate risk that Mr. Hart would be arrested. He acknowledged that this was the principal concern. Other concerns were "the backdrop of the threat to which this man was targetted" — "there was a decline in activity"; "the problems that he was creating for his handlers to keep him out of criminal activities; the number of times they would have to intercede with the local police or other agencies; the whole question of whether he saw the threat down the road as requiring the employment of this man". In addition, according to Mr. Begalki, Assistant Commissioner Sexsmith stated that Mr. Hart's conduct in surreptitiously taping an interview with the Solicitor General "attests to his scruples". While Officer in Charge in Toronto, Mr. Sexsmith had argued against the employment of Mr. Hart, but this employment was supported by Assistant Commissioner Draper, Mr. Sexsmith's superior in Ottawa at the time. Mr. Sexsmith succeeded Mr. Draper in 1975 and was then in a position to implement the views which he had maintained about the use of Mr. Hart.

72. Confirmation of the importance of the interest expressed by Immigration officials in Mr. Hart, in provoking a review of whether his employment should

be continued, is found in Immigration files: a memorandum in the Immigration file, dated August 19, 1975, recorded that a Departmental intelligence officer in Toronto had been asked a few days earlier for information concerning Warren Hart. An Immigration intelligence officer in Winnipeg had reported on Mr. Hart's visit with Mr. Douglas to Winnipeg. The August 19 memorandum stated that Mr. Hart "had been the subject of a USINS report of June 9, 1975 in which he was described as having a criminal background and potentially dangerous". We have read the United States Immigration and Naturalization Service report of June 9, 1975. It reported that a "reliable source" had reported that Mr. Hart

is engaged in smuggling Italian nationals into the U.S. from Canada. He allegedly conceals the aliens in the trunk of a Cadillac sedan with Maryland license ASN-510. Hart has been reported to be a member of the BLACK LIBERATION ARMY who is wanted in the U.S. for criminal offenses. Because of his affiliations and his possible criminal background, he should be considered dangerous.

We know how erroneous this report was, and we note that the Canadian Immigration file contains a note that the Toronto intelligence officer had contacted the F.B.I. and been advised that they had no record of any outstanding warrants.

73. The August 19 memorandum also stated that the departmental intelligence officer in Toronto had learned "that HART was a paid informer, in the employ of the R.C.M.P. and probably one or two U.S. police organizations". It then stated that on August 18 "it was learned that Hart had been ordered deported from Canada on 9/12/1971 and was thus illegally in Canada", and it continued: "R.C.M.P. sources in Toronto indicated most strongly that no Immigration action be taken against Hart . . .". The memorandum noted "the seriousness of the case (i.e. — it is a case of great potential embarrassment for the Department and the Minister)" and that the Acting Director General of the Immigration Division had directed an Immigration official

to contact the R.C.M.P. in Toronto in order to impress upon them the necessity for initiating discussions between the R.C.M.P. and this Department at the *highest level* regarding Hart. If the R.C.M.P. in Toronto were not willing to proceed in this matter [the official] was instructed to begin to proceed to take normal enforcement action against Hart, i.e. arrest Hart under the provisions of Immigration Act and proceed with deportation action.

Conclusion

74. There was no impropriety on the part of any member of the R.C.M.P. in regard to the process by which the decision was taken to terminate Mr. Hart's employment.

(1) The termination of Mr. Hart's employment

75. In the autumn of 1975 senior R.C.M.P. officers were considering whether Mr. Hart's services should be retained or terminated. Finally the decision was made to terminate. Inspector Worrell met Mr. Hart and advised him of the

decision. Mr. Hart testified that Mr. Worrell paid him \$6,000 cash as severance pay. He stated that he deposited the \$6,000 in his bank account. There is a receipt that is dated November 13, 1975, for \$7,930, signed by Mr. Hart (Ex. Q-16), but he says that he does not recall having signed it. (Mr. Hart denies that he met Mr. Worrell on November 13, 1975. In this he is clearly incorrect). Nor, he says, does he recall having been presented with a receipt for that amount to be signed. Mr. Hart was alone with Mr. Worrell at the time. Mr. Hart denies having been paid that amount. Yet, Sergeant McMorran testified that Mr. Hart told him that Mr. Worrell had paid him \$7,930, and Mr. Worrell testified that he paid him \$7,930.

76. Mr. Hart says that on four or five occasions at the most during his years with the R.C.M.P. he signed blank receipts upon request. This, he understood, was to enable a correction to be made in regard to a receipt previously signed for the wrong amount. Such blank receipts were in the same form as Ex. Q-16.

77. When Mr. Hart returned to the United States he was unemployed for 18 months.

78. Sergeant Plummer testified that on December 16, 1975, the date Mr. Hart finally left Canada, he paid Mr. Hart another \$1,668.00 and had Mr. Hart sign a receipt (Ex. Q-20). The money was to enable Mr. Hart to terminate his lease on an apartment in Toronto. Sergeant McMorran testified to the same effect. In addition he said that some other member of the R.C.M.P. had ascertained that it was not necessary for Mr. Hart to pay six months' rent, yet their superiors authorized the money to be paid to Mr. Hart to avoid further argument. This appears, from a reading of the file, to be correct.

Conclusion

79. We accept the evidence of Inspector Worrell as to the amount he paid to Mr. Hart. We do so despite the evidence to the contrary given by Mr. Hart. In this we are governed to a large extent by the existence of a receipt for the full amount signed by Mr. Hart. We have reached this conclusion with some difficulty in the light of Mr. Hart's testimony that, on occasion, he signed blank receipts.

80. We have already noted Inspector Worrell's instinctive attitude toward Mr. Hart. Similarly, Mr. Worrell stated that when he was in the course of terminating Mr. Hart's services on November 13, 1975, Mr. Hart told him that the deportation in December 1971 had been arranged because of operational needs, but Mr. Worrell, evidently unaware of the facts which support that proposition, thought that Mr. Hart was "possibly embellishing" the truth. We mention this only to illustrate that Mr. Worrell was not really familiar with the facts concerning Mr. Hart.

(m) Was Mr. Hart offered permanent employment?

81. According to Mr. Hart, in 1972, when plans were being made for a trip he was to make to the Caribbean with the authority of the Security Service, he went to Ottawa and there met Inspector Begalki. According to Mr. Begalki

and Sergeant Brown, the meeting was in February 1973. Mr. Begalki expressed satisfaction with Mr. Hart's work. They discussed the fringe benefits that had earlier been discussed in Baltimore, and, according to Mr. Hart, Mr. Begalki stated: "When this is over, we will give you a position as a civilian employee, with the R.C.M.P." According to Mr. Hart, he would be employed as a "coordinator". Mr. Hart says that Mr. Begalki promised to put a letter on his file to that effect, and that on subsequent occasions he was assured that that had been done. In his testimony, Mr. Hart denied that what Mr. Begalki spoke of was only the possibility of a job with the R.C.M.P. Mr. Hart testified that Mr. Begalki said that in the letter to be placed on his file "a job offer would be made, something like a recommendation; in other words, I was to receive a job upon the termination of that type of employment". He says he equated such a recommendation with an offer.

82. In a television interview in January 1978 Mr. Hart asserted that when Sergeant Brown and Constable Laird came to see him in Baltimore in 1972 there was a promise of "a permanent job as a coordinator with the R.C.M.P.". In cross-examination before us he admitted that that was incorrect.

83. Mr. Begalki confirmed in his testimony that there had been a discussion with Mr. Hart about long-term employment, pension plans and other matters, but his filed report indicates that the discussion occurred in Ottawa in February 1973. Mr. Begalki testified that the R.C.M.P. "could only cross the bridge for long-term employment after the first employment had ceased, and depending on the conditions of the day and his qualifications as they relate to the vacancies within the Force and the hiring practice of the Force, that the issue would have to be addressed at that time". Mr. Begalki said that he was sure that he told Mr. Hart "that depending on the vacancies within the Force and the Force's needs, we could then possibly match up his qualifications with any vacancies". He said that he would have used the words "civilian member" but that he does not recall using the term "coordinator". He said that in the discussion Mr. Hart indicated that he wanted some security because his family situation was producing stress. Mr. Begalki stated that he "certainly made it clear that the problems he raised would have to be carefully studied".

84. Mr. Brown, who retired from the R.C.M.P. in 1976, testified that he was present at the time of Mr. Begalki's discussion with Mr. Hart and that Mr. Hart was not promised a permanent position, although there was discussion about fringe benefits such as medical assistance and the payment of life insurance premiums. Mr. Brown testified that to the best of his recollection "Mr. Hart was advised by Mr. Begalki that there were positions available for security in the R.C.M.P. for civilian members from time to time, as approved by the Commissioner, and that sort of a rhetoric conversation". According to Mr. Brown, no offer of employment was made.

Conclusion

85. We accept the evidence of Chief Superintendent Begalki and ex-Sergeant Brown. It is supported by advice we have seen in R.C.M.P. Security Service policy files concerning the undesirability of holding out prospects of permanent

employment to sources, although we realize that there can be no certainty that that was always followed. We are aware that the Security Service have had some difficulty with this question and we suspect that on occasion language has been used which would make the prospect of long-term employment appear to be at least within the realm of possibility. However, it is so improbable that such a capable and knowledgeable member of the Security Service as Mr. Begalki would make such a promise or offer as Mr. Hart alleged, that we cannot accept Mr. Hart's allegation that it was. In any event, even Mr. Hart acknowledged that a "recommendation" was spoken of. We think that Mr. Hart was allowing himself to be misled if he treated language that spoke of a recommendation as if it were a promise or offer of long-term employment.

A general comment

86. There is one further matter upon which we shall comment. Mr. Hart may at some time wish to return to Canada either as a visitor or as a landed immigrant. If he should seek to do so, we invite the immigration authorities to take into account what we have said in this chapter. Our impression, based on reading the Force's files, is that within the R.C.M.P. there is a bias against Mr. Hart, resulting from his having spoken out publicly, and this may be the cause for what we perceive as a degree of unfairness in reports to the Solicitor General. We believe that a fair reading of Mr. Hart's R.C.M.P. file justifies the conclusion that he is not a criminal; that if he was convicted many years ago for assault, the insignificant amount of the reported fine is some indication that the matter was of slight degree; that he came to Canada at the request of the R.C.M.P.; that while in Canada for over four years he performed laudable service for the people of Canada. If he had shortcomings in regard to any of the specific matters we have discussed, those should be measured in conjunction with the value of the services he rendered.

CHAPTER 12

CHECKMATE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

PART VII

EXECUTIVE POWERS IN REGARD TO PROSECUTIONS

A. OBSERVATIONS CONCERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE

1. It is not within our jurisdiction to advise the federal Attorney General or provincial attorneys general whether, in any particular situation, there should or should not be a prosecution, because that is a matter solely within the discretion of attorneys general. On the other hand, we do consider it appropriate to refer to factors that may emerge from the evidence before us, and to the principles that bear on the exercise of prosecutorial discretion. We shall refer to those principles for the benefit of the general reader.

2. The same principles may also be pertinent to our conclusions as to whether those R.C.M.P. members involved in particular acts, quite apart from prosecution, should be disciplined or even criticized in any way. There again, however, we emphasize that the discretion whether or not to initiate disciplinary proceedings rests entirely within the R.C.M.P., and it is not within our terms of reference to recommend discipline in particular cases. Before enumerating the principles involved, however, two points should be made.

3. The first is that as a general principle no man is above the law. When the persons concerned are police officers this principle requires particular attention. In *Regina v. Ormerod*¹ Mr. Justice Laskin (who was then a member of the Ontario Court of Appeal) said:

In principle, the recognition of "public duty" to excuse breach of the criminal law by a policeman would involve a drastic departure from constitutional precepts that do not recognize official immunity, unless statute so prescribes: see *Roncarelli v. Duplessis*.² How far such immunity exists in the exercise of discretionary power not to prosecute is unknown to me; but even if it be considerable, the fact that it does not reside in a settled rule is a safeguard. Legal immunity from prosecution for breaches of the law by the very persons charged with a public duty of enforcement would subvert that public duty. The matter is, in my view, more grave in relation to the criminal law than it is in any consideration of immunity from civil liability where policemen may incur it while in the discharge of their official duties. I may mention here a suggestion that has been made to relieve them of personal civil liability but to make or leave their employers

¹ [1969] 2 O.R. 230 at 244.

² [1959] S.C.R. 121, 16 D.L.R. (2d) 689.

liable: see Mathes and Jones, Toward a "Scope of Official Duty" Immunity for Police Officers in Damage Actions.³ There is no similar doctrinal basis for excusing personal criminal liability.

The Criminal Code presently prescribes justification for policemen and others in a number of respects where they are proceeding to enforce the law, as, for example, by arresting offenders. This is designed as an aid to enforcement, and presumes that the enforcing officers are not themselves participating in the criminal activity that they are seeking to curb. Recognition of "legal lawlessness" is, however, something far different. It does not represent a value that fits into our system of criminal law; it would not amount simply to "setting a thief to catch a thief" because, whatever be the disaste for *agents provocateurs*, it would mean the abandonment of legal control over them which, as the cases show, has been exercised from time to time. . . .

4. In a statement made in the House of Commons on March 17, 1978, on the application of the Official Secrets Act, the Minister of Justice, the Honourable Ron Basford, said:

Mr. Speaker, the second principle is that every citizen is subject to the law. One of the pillars of our system of government, dating back three centuries, is that neither the King nor any other person, be he a member of this House, a member of the government, a member of the press, or someone possessed of title or position, is above the law. The law should apply to all, equally. He who breaks it must bear the consequences.⁴

The Honourable Roy McMurtry, Attorney General of Ontario, speaking in the Legislature of Ontario on February 28, 1978, expressed the view that the authorities "must be scrupulous to treat all members of the community equally without any regard to their position". He also said:

The holders of public offices will receive the same treatment under the law as the ordinary citizen, even though the consequences may be more injurious.⁵

5. The second point is that in a federal country such as Canada, when the actions of a national police force are under consideration, there is a need to strive for consistency in the approach to prosecution from one jurisdiction to another. If the act of a certain individual is being considered with a view to possible prosecution, and if his act was performed as part of the implementation across Canada of a centralized policy of the Force, fairness would require that in all provinces like cases be treated alike, so far as decisions to prosecute or not to prosecute are concerned. Consequently, in such cases some degree of consultation among attorneys general may be desirable.

6. A third introductory point that we must mention is that in deciding whether to prosecute, as the Attorney General of Canada, the Honourable Ron Basford, said in 1978, "there must be excluded any consideration based upon narrow, partisan views, or based upon the political consequences" to the attorney general or to others. He continued:

³ (1965) 53 Geo. L.J. 889.

⁴ Canada, House of Commons, *Debates*, March 17, 1978.

⁵ Legislature of Ontario Debates, 2nd session, 31st Parliament, No. 3, pp. 50-2.

In arriving at a decision on such a sensitive issue as this, the Attorney General is entitled to seek information and advice from others but in no way is he directed by his colleagues in the government or by parliament itself. That is not to say that the Attorney General is not accountable to parliament for his decisions, which he obviously is.⁶

As Sir Hartley Shawcross has said, in order that an attorney general may "acquaint himself with all the relevant facts", including "any. . . consideration affecting public policy",

. . . he may, although I do not think he is obliged to, consult with any of his colleagues in the government, and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what the decision ought to be. The responsibility for the eventual decision rests with the Attorney-General, and he is not to be put, and is not put, under pressure by his colleagues in the matter. Nor, of course, can the Attorney-General shift his responsibility for making the decision on to the shoulders of his colleagues. If political considerations which in the broad sense that I have indicated affect government in the abstract arise it is the Attorney-General, applying his judicial mind, who has to be the sole judge of those considerations.⁷

Principles relating to the exercise of prosecutorial discretion

7. It is not our intention to review all relevant principles in depth. We intend only to refer in detail to certain principles that have a particular bearing on the kinds of factual situations that we have reported on.

(a) The first question that must be answered when a prosecuting authority is deciding whether or not to prosecute is whether evidence is available of the commission of an offence and there appears to be a reasonable prospect of a conviction. Consideration must be given to whether there are any insuperable or fatal defects to the case as a result of such legal issues as absence of jurisdiction, the expiry of a time limitation, or the inadmissibility of evidence. The prosecuting authority will consider what weight is likely to be given by the jury or judge to the evidence that is presented, and what likelihood there is that the evidence, upon being weighted, will be held to prove guilt. The prosecuting authority will be well aware that guilt must be proved beyond a reasonable doubt, not by a mere preponderance of evidence. If there are open issues of fact or law consideration must be given to whether they will probably be resolved in favour of the prosecution. This first consideration has been stated as follows:

If the prosecutor exercising his discretion impartially concludes. . . that there is only the most tenuous foundation for the charge, it is surely

⁶ Canada, House of Commons, *Debates*, March 17, 1978.

⁷ As quoted by J.L.J. Edwards, *The Law Officers of the Crown* (1964), p. 223.

preferable to halt the prosecution at this pre-trial stage and not subject either the accused or the victim to the ordeal of a public trial.⁸

Another Crown counsel has written that

To commence a prosecution or permit it to continue in the face of [the requirements of the law that the accused must be proved guilty "beyond a reasonable doubt"], where the evidence forthcoming is not such as is calculated to attain this standard, would be an abuse of discretion. It would amount to the launching of a "fishing expedition" in the hope that sufficient evidence would somehow turn up during the course of the trial. Such a procedure could not be held to meet the test of the principles which underlie the Bill of Rights.⁹

In many of the factual situations as to which we have reported in this Report, the evidence that has been available to us would or might not be available as part of the case for the prosecution. Frequently the evidence before us as to the conduct of a member of the R.C.M.P. has been from his own mouth, but he has testified under the protection of section 5 of the Canada Evidence Act, and that testimony could not be used against him in court if he were prosecuted. Yet other evidence may be available to establish what his conduct was. In other situations witnesses before us have had no real memory of events of some years ago and the evidence before us is based on written communications and written records made at the time. In such cases the evidentiary rules relating to hearsay would apply in court although they did not apply to our proceedings. We mention these merely as illustrations of difficulties that may be encountered by a prosecuting authority in deciding whether there is sufficient evidence available to make it reasonably probable that the essential facts could be proved beyond a reasonable doubt.

- (b) If the answer to the first question is in the affirmative, i.e. that there is a reasonable prospect of a conviction, the authorities are unanimous in recognizing that the prosecutorial authority must still be satisfied that a prosecution is, in all the circumstances of the case, consistent with the public interest. As the Attorney General of Ontario, the Honourable Roy McMurtry, has stated in the speech to which reference has already been made:

A prosecution is not automatically launched in every case where there is some evidence to support the laying of criminal charges. Police officers and the Crown law officers who advise them have broad powers to decide whether or not to launch a prosecution, taking into account all the circumstances surrounding the case . . .

This exercise of judgement was best put by two Attorneys General of England, Sir John Simon and Sir Hartley Shawcross, both speaking in the House of Commons. I quote: "There is no greater nonsense talked about

⁸ J.L.J. Edwards, *Criminal Law and Its Enforcement in a Permissive Society* (1969-70) 12 Crim. L.Q. 417, at p. 427.

⁹ Keith Turner, *The Role of Crown Counsel in Canadian Prosecutions* (1962), 40 Cdn. Bar Rev., p. 448.

Attorney General's duty than the suggestion that in all cases the Attorney General ought to prosecute merely because he thinks there is what lawyers call 'a case'. It is not true, and no one who has held the office supposes that it is."

Sir Hartley Shawcross supported Sir John Simon's position: "It has never been the rule in this country. . . that suspected criminal offences must automatically be the subject of prosecution. . . The public interest. . . is the dominant consideration."

Sir Hartley outlined how he directed himself in deciding whether or not to prosecute in a particular case. I quote: "The Attorney General may have to have regard to a wide variety of considerations, all of them leading to the final question: Would a prosecution be in the public interest; including in that phrase, of course, in the interests of justice?"

In the ordinary case. . . one. . . has to review the evidence, to consider whether the evidence goes beyond mere suspicion and is sufficient to justify a man being put on trial for a specific criminal offence.

In other cases, wider considerations than that are involved. It is not always in the public interest to go through the whole process of the criminal law if, at the end of the day, perhaps because of mitigating circumstances, perhaps because of what the defendant has already suffered, only a nominal penalty is likely to be imposed."

Mr. Speaker, I would stress that not merely is this the law of Canada as well as England, but that it also reflects very accurately the responsibilities of the Attorney General of Ontario, certainly as I have experienced them during the last two-and-a-half-years.¹⁰

- (c) Although police officers should be treated the same as other persons in the application of the same law that is applicable to them and to other persons, a factor which may in an appropriate case be taken into account in determining what the public interest is, is illustrated by the sentiments expressed in *Blake v. The Queen*,¹¹ a decision of the Supreme Court of Prince Edward Island. In that case the appellant, a town Chief of Police, had committed perjury during the trial of an accused by giving evidence as if the events he described had been observed by him personally, whereas in fact they were observed by other persons who were available to give the evidence if they had been called. At trial he was sentenced to two years imprisonment. On appeal, the court was unanimous in reducing his sentence to one day of imprisonment and a fine of \$1,000. Mr. Justice M.J. McQuaid (with whom Mr. Justice Large concurred) said:

He has no criminal record whatsoever and we are satisfied that the commission of this offence did not stem from any real criminal intent. His counsel seems to express it quite accurately when he states in his factum:

"The offence committed by the appellant was committed more out of a misapprehension of the function of a police officer in the criminal justice system rather than for the reasons normally associated with criminal behaviour."

¹⁰ Legislature of Ontario Debates, 2nd session, 31st Parliament, No. 3, pp. 50-2.

¹¹ [1978] 4 C.R. (3d) 238.

The considerations which should guide the court in determining the fitness of a sentence to be imposed in a criminal matter are set out by our present Chief Justice in *R. v. Muttart* [1971], 1 Nfld. & P.E.I. R. 404 (C.A.), where he states at p. 405:

"... the degree of premeditation involved, the circumstances surrounding the commission of the offence; the gravity of the crime; the attitude of the appellant after the commission of the crime as it served to indicate the degree of criminality involved; the previous record of the appellant; the age, mode of life, character and personality of the offender; and the recommendation of the jury."

The third member of the P.E.I. Court of Appeal, Mr. Justice C.R. McQuaid, reluctantly concurred with the reduction of sentence decided upon by the other two members of the court, but he expressly rejected the contention of counsel for the Police Chief. He said:

Prior to this occurrence, the appellant had had twenty years of police and police-related work. This, in my opinion, was no mere misapprehension; he knew, or should have known, better.

One can, perhaps, understand though not excuse the perjury of an accused in his attempt to evade conviction and punishment. On the other hand, one can neither understand nor excuse the perjury of a police officer in his attempt to secure the conviction of an accused, regardless of how convinced that police officer may be personally of the guilt of the accused.

The fundamental duty of any police officer is to respect and protect the rights of *all* citizens, and that includes as well the rights of any individual citizen with respect to whose guilt the officer may be morally convinced. When we, as a society, and particularly the courts, condone any deviation from this principle, we are, indeed, in trouble.

Factors such as those discussed in the two judgments just quoted from are relevant not only at the stage after conviction when the court is deciding what sentence is appropriate, but also to the exercise of the discretion to prosecute. On the other hand, some factors, such as motive, are irrelevant to the determination of criminal responsibility or even the launching of a prosecution, whereas after conviction they may be relevant to the nature of the punishment to be imposed, if any.

- (d) Another factor which may be taken into account in assessing the public interest is whether the conduct of the police officer was a matter of choice on his part or is more aptly characterized as following an official practice of the police force which had the approval of the senior management of the force.
- (e) Similarly, where the conduct of members of the police force is institutionalized in the sense described in (d), a factor which the public interest may require to be taken into account, in assessing whether a prosecution should lie against senior officers who authorized the practice, is whether the practice had either expressly or by implication received the approval of government. This issue arises only where the practice in question has been known to government and the government has taken no steps to put a stop to the practice. Here, reference should be made to a report of the United

States Department of Justice on January 14, 1977, concerning its investigation and prosecutorial decisions with respect to Central Intelligence Agency mail opening activities in the United States:

The issue involved in these past programs, in the Department's view, relates less to personal guilt than to official governmental practices that extended over two decades...

During the period in which the mail openings took place, there was no clear control to ensure that arguably valuable intelligence techniques would be employed only with careful attention to their legality and their effects on individual rights. The absence of defined control was perhaps in part the result of the necessary secrecy, even within the government, that attends intelligence operations. Whatever its cause, the failure of officials at the highest levels who were generally aware of these activities (though they did not participate in them) to clarify the law and establish institutional controls, and their apparent contentment to leave the individuals operating in this field to proceed according to their best estimates of legal constraints in a vague and yet vitally important area — all this would render a prosecution by the government hypocritical. What really stands indicted as a result of the information which the Department's investigation has disclosed is the operation of the government as an institution: specifically, its failure to provide adequate guidance to its subordinate officials, almost consciously leaving them to "take their chances" in what was an extremely uncertain legal environment.

... The failure to convict... would hinder the development of the standards that we believe the law now establishes. The Department believes that the objective of preventing repetition of such activity can better be achieved by other means.

This passage requires some comment about particular details in it. First, in our system it is quite erroneous to speak of "prosecution by the government"; when an attorney general decides whether or not to prosecute the decision is *his*, not that of the government, even though he is also a minister in that government. Thus, for example, if the person against whom criminal proceedings are contemplated happens to be a Minister of the Crown or a Deputy Minister, or, for that matter, anyone in the executive branch of government, it is the duty of the Attorney General to reach his decision without regard to any embarrassment or prejudice that his decision to institute proceedings may cause either the individual concerned or the government of which he happens to be a member. Consequently, that part of the passage just quoted which speaks of government "hypocrisy" should be regarded as inapplicable to Canada. Our second comment on the passage quoted is as follows. Any failure at the governmental level (and, equally, at the R.C.M.P.'s management level) to clarify the law and establish institutional controls of activities known to them should not logically be regarded as having greater weight in favour of the interests of a member of the R.C.M.P. who might be charged with an offence, than would a defence of superior orders. If, as we suggest in our Second Report, Part IV, Chapter 1, "it is doubtful that a member of the R.C.M.P. would, at least in the absence of sudden violence or some other emergency, be able to raise successfully a defence of

superior orders", then it should follow, in logic, that a "superior's" conduct falling short of an "order" ought to be accorded no greater weight.

- (f) The same report of the United States Department of Justice also identifies another factor which may be relevant to the public interest in the exercise of prosecutorial discretion. The report observes that

The Department has concluded that a prosecution of the potential defendants for these activities would be unlikely to succeed because of the unavailability of important evidence and because of the state of the law that prevailed during the course of the mail openings program...

... An acquittal would have its own costs—it could create the impression that these activities are legal, or that juries are unwilling to apply legal principles rigorously in cases similar to this.

Much of the thrust of the passages we have quoted tends to emphasize those factors which might militate in favour of non-prosecution or clemency. It should be borne in mind that public statements by prosecuting authorities—such as those we have quoted—as to the manner of exercising prosecutorial discretion are usually made to explain decisions that have been taken not to prosecute. It is less easy to find recent public statements by a prosecuting authority as to his reasons for prosecuting when a prosecution has been commenced. Consequently, we can offer no counterbalancing quotations, but remind the reader that, in addition to the factors that favour non-prosecution, there should be placed in the scales the importance of ensuring that members of a police force obey the law. It should be borne in mind that peace officers are already given substantial protection by the law, provided that they stay within its terms, in the use of such investigative techniques as search, seizure, arrest, detention, interrogation, physical surveillance and electronic surveillance. If there is evidence that any persons outside the police force, be they members of the public service or Ministers of the Crown, participated in offences, the decision whether to prosecute such persons is governed by the same principles.

B. OBSERVATIONS CONCERNING DISCIPLINARY PROCEEDINGS

8. It is not our intention to set out exhaustively the considerations which the Commissioner of the R.C.M.P. might properly take into account in deciding whether to discipline a member for conduct which we have criticized in this Report. However, it is appropriate that we draw attention to the observations of the Director of the F.B.I., Judge W.H. Webster, in a Report made to the United States Attorney General, Judge Griffin Bell, on December 5, 1978. This Report was concerned with the question of whether or not administrative discipline should be instituted against members of the F.B.I. engaging in illegal activities during the investigation of the Weather Underground organization. The Department of Justice had already decided not to prosecute the members of the F.B.I. arising out of this matter. He said:

Administrative discipline rests upon an independent base from prosecutive action. Its purpose is to assure honest and efficient performance of duty and to maintain the high standards of the agency. It should have a therapeutic effect upon the individual disciplined and upon other employees. To be effective, it should be promptly and impartially administered. It is not a substitute for prosecutive action and in fact may be applied whether or not preceded by prosecution. For that reason, I have consistently requested the Department of Justice to exercise its prosecutive discretion in matters involving F.B.I. employees without regard to what administrative action, if any, I might conclude to be appropriate.

He set forth the general factors which led to his decision, as follows:

In assessing the disciplinary action proposed to be taken in specific cases, I have considered a number of factors, including the gravity of the conduct, whether it was isolated or repeated, whether it contributed to involvement of others, and whether it was in the nature of negligence or insubordination. I have considered mitigating circumstances such as the general climate of the times and whether the agent was performing reasonably in accordance with superior orders. I have also considered the agent's previous record, his subsequent record, the level of his responsibility at the time the conduct occurred, and the extent and quality of his cooperation during the inquiry.

9. Judge Webster noted that street agents engaged in wiretapping without a judicial warrant, and in mail openings, along with other activities, under the supervision of, or specific authority from, supervisors. This led him to decide that no disciplinary action was appropriate for 58 street agents. However, he censured two of the street agents. In one of the cases, the agent, without previous authorization, searched an apartment through the co-operation of the building's rental agent. Judge Webster observed:

While his supervisor orally approved his subsequent report of the entry, it is clear that the agent's intrusive actions were on his own. In order to make certain that this activity is not repeated, I have censured the agent.

10. In the other case, the agent, posing as a plumber, was admitted to an apartment by the building superintendent. Judge Webster recited conflicting evidence as to whether the agent obtained advance approval from his supervisor to enter, and concluded as follows:

I have determined that appropriate advance approval was not obtained and the results of this entry were incorrectly reported. In order to make certain that this activity is not repeated, I have censured this Special Agent.

With regard to the street agents who were not disciplined, Judge Webster observed that

I think it is significant that since 1976, when the Attorney General guidelines for domestic security investigations went into effect, there has not been a single incident resulting in a successful claim of constitutional tort against an F.B.I. agent. Thus, it seems clear to me that to discipline the street agents at this late date for acts performed under supervision and without needed legal guidance from F.B.I. Headquarters and the Department of Justice would wholly lack any therapeutic value either as a personal

deterrent or as an example to others. It would be counter-productive and unfair.

Most of the supervisors whose actions he reviewed also escaped his disciplinary action. He observed that he had

... generally followed the same policy of not assigning discipline when the supervisor merely was in the line executing surreptitious investigation techniques with the knowledge and approval of superior authority.

However, he instituted disciplinary proceedings proposing administrative action ranging from 30 days suspension without pay, to dismissal, in four cases. They may be summarized as follows:

- (a) a headquarters supervisor who, while serving as a field supervisor, ignored specific instructions and manual regulations, and authorized and approved electronic surveillances and mail openings "thereby failing to discharge his duty to give needed guidance to his subordinates and subverting the existing procedures which, if followed, should have restrained such conduct". He also violated existing procedures by approving four surreptitious entries without obtaining prior authorization from his superiors. Judge Webster proposed to dismiss this employee.
- (b) A headquarters supervisor who "failed to take action on field reports of unauthorized activities that should readily have been recognizable to him in cases for which he had responsibility as desk supervisor". Judge Webster proposed to dismiss this employee.
- (c) A field official who, in an interview with representatives of the F.B.I.'s planning and inspection division, furnished evasive and inconsistent answers to questions put to him and thus "failed to co-operate fully in this inquiry". Judge Webster proposed to demote this employee.
- (d) A field supervisor who "installed and monitored an electronic surveillance device without specific authority from Headquarters and, upon being informed that Headquarters would not approve the installation, erased the tapes without authorization". Judge Webster describes this as "a serious but isolated infraction which reflects negligence and confusion rather than willfulness and concealment". Judge Webster censured and suspended this employee for 30 days.

11. In his Report of December 5, 1978, Judge Webster also said:

Administrative discipline is not a criminal process. The Attorney General has passed upon the criminal aspects of the activities under consideration and has concluded that they did not warrant prosecution.

I in turn viewed the conduct more in reference to standards of discipline and conduct imposed upon employees of the Bureau, breaches of which are subject to administrative discipline. It is vitally important that Special Agents comply strictly with these standards and regulations. Procedures are intended to protect the public, the Bureau, and the employee. This is especially true of activities for which prior higher approval is required. An agent who ignores the requirement of prior authorization must be subject to discipline if such rules and regulations are to be effective.

12. We do not think that the tradition in Canadian police forces has been that administrative discipline has been regarded as wholly distinct from offences under the criminal law or other statutes. In other words, there is ample precedent both within the R.C.M.P. and other Canadian police forces, for disciplinary proceedings to be taken against a member who has escaped prosecution by the civil authorities or whose trial has resulted in an acquittal. With respect to the R.C.M.P. it is not unusual that the member will nevertheless be disciplined, for he may be regarded as having committed either a "major service offence" under section 25 or a "minor service offence" under section 26 of the R.C.M.P. Act. Section 25 provides that:

Every member who

- (o) conducts himself in a scandalous, infamous, disgraceful, profane or immoral manner... is guilty of an offence, to be known as a major service offence and is liable to trial and punishment as prescribed in this Part.

Section 26 provides as follows:

Every member who violates or fails to comply with any standing order of the Commissioner or any regulation made under the authority of Part I is guilty of an offence, to be known as a minor service offence, and is liable to trial and punishment as prescribed in this Part.

C. THE AVAILABILITY OF EXECUTIVE RELIEF FROM PUNISHMENT OTHERWISE THAN BY DECIDING NOT TO PROSECUTE

13. Can a pardon be granted before conviction and even before prosecution? This question received public attention in the United States when President Gerald Ford pardoned former President Richard Nixon in 1974. That pardon was conferred by virtue of Article II, Section 2 of the United States Constitution, which gives the President "power to grant reprieves and pardons for offences against the United States except in cases of impeachment". Mr. Nixon was accorded "a full, free and absolute pardon — for all offences against the United States which he... has committed or may have committed" during his years as President. President Ford declared: "The Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders".¹²

14. In Canada, the Criminal Code provision for pardon is limited to pardons after conviction. Section 683(2) states:

The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

However, section 686 of the Criminal Code provides that nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy. Two

¹² See J.L.I.J. Edwards, *Ministerial Responsibility for National Security*, 1979, p. 50.

positions may be argued for: one, that section 683(2) was intended to be an exhaustive legislative formulation of the circumstances in which a pardon may be granted; the second, that the subsection is "declaratory of one situation but does not purport to cover all situations in which a free or conditional pardon may be granted".¹³ Whatever the meaning of the subsection, the power of the Governor General of Canada to grant a pardon appears to be limited by his Letters Patent, in the case of a principal offender, to situations where there has been a conviction. According to the Letters Patent:

We do further authorize and empower our Governor General . . . to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice or Magistrate administering the laws of Canada, a pardon either free or subject to lawful conditions . . .¹⁴

The Letters Patent, significantly, empower the Governor General to pardon an accomplice "when any crime has been committed for which the (principal) offender may be tried".

15. The federal Cabinet, in the name of the Governor in Council, has the power of clemency,

. . . that is, the issuing of a reprieve or pardon to offenders against the laws of the Dominion, notably, of course, for criminal offences. This may be applied to individuals or, a more unusual example, to a group, such as the general amnesty given to offenders under the Military Service Act after the First World War.¹⁵

16. Proclamations of amnesty for past offences against the Crown have been issued by Governor Generals of Canada in 1838 and 1875 as exercises of the Royal Prerogative.¹⁶

17. Whether there is a subsisting power to pardon before conviction in England is the subject of disagreement among English writers. S.A. de Smith wrote in 1971:

It would seem that a pardon may be granted *before* conviction; but this power is never exercised. The line between pardon before conviction and the unlawful exercise of dispensing power is thin.¹⁷

On the other hand, R.F.V. Heuston states without qualification that ". . . the monarch may pardon any offence against the criminal law whether before or after conviction".¹⁸ The conclusion of Professor Edwards is that

. . . the general understanding among British constitutional law authorities is that the practice has fallen into disuse.

¹³ *Ibid.*, p. 50.

¹⁴ *Ibid.*, p. 51.

¹⁵ R. MacGregor Dawson, *The Government of Canada*, Toronto, The University of Toronto Press, 1952, p. 243.

¹⁶ Edwards, *Ministerial Responsibility For National Security*, fn. 179A, citing Todd, *Parliamentary Government in the British Colonies*, 1st ed., 1880.

¹⁷ *Constitutional and Administrative Law*, p. 128. See also Wade and Phillips, *Constitutional and Administrative Law*, 9th ed. (A.W. Bradley, ed.) p. 338.

¹⁸ *Essays in Constitutional Law*, 2nd ed., p. 69.

He expresses the opinion that

. . . the most important objection to any such practice is that it is out of harmony with modern views as to the propriety of granting dispensation before the normal process of the criminal law has run its course.¹⁹

His view, like that of Professor de Smith, is that the exercise of the prerogative power of pardon before conviction "evokes echoes of the Stuarts' dispensing power which was roundly condemned in the Bill of Rights in 1688".²⁰

¹⁹ Edwards, *Ministerial Responsibility For National Security*, p. 52.

²⁰ Edwards, *ibid.*, p. 53.

PART VIII

RECOMMENDATIONS CONCERNING PUBLICATION OF THIS REPORT

1. Our conclusion concerning some of the situations that we report on here is that, on the basis of the evidence before us, there were, or may have been, violations of the Criminal Code or of other federal or provincial statutes that provide a penalty upon conviction. These are situations as to which, while in most cases the evidence is public, counsel made their written and oral representations to the Commission *in camera*, in response to notices given to their clients under section 13 of the Inquiries Act. This was done in accordance with our reasons for decision of May 22, 1980, (reproduced as Appendix H to our Second Report). In those reasons we observed that

... it is possible that we may recommend to the Governor in Council that our analysis of the legal position in the particular case and our recommendations as to what should be done should not be published until the matter is finally disposed of by a decision either not to prosecute or launch disciplinary proceedings, or, if there is a decision to prosecute or launch disciplinary proceedings, the final disposition of such criminal or disciplinary proceedings.

We invited submissions from counsel with regard to this matter of publication but received representations from only one counsel, Mr. Yarosky, who acts for several members of the R.C.M.P.

2. Having reflected a good deal about this matter, we are of the opinion that it would be unfair to those concerned to publish our Report at this time, in so far as it concerns situations which may possibly lead to criminal proceedings. Commissions of Inquiry are extraordinary inquisitorial procedures that may, and do, require people to testify, even though, if they were accused in court, they could not be compelled to do so in the court. That an accused is not compelled to testify in court is regarded as a fundamental principle of our legal system. The publication of our Report, and the attendant publicity, might make it difficult for those against whom we make a report or charge of misconduct to obtain a fair trial: the trier of fact may read our Report or — more likely — press summaries of our Report, or be told (perhaps erroneously) about what we had said. In the latter two cases the trier of fact is likely to be unaware of our warning that, as we said in our reasons for decision of May 22, 1980,

Counsel for the Commission have done their utmost to elicit all relevant evidence, whether favourable or unfavourable to an individual, but there may be evidence that has not been made known to our counsel and that

would be placed before a court of law, either favourable or unfavourable to the accused, that would result in the facts having a different complexion. Moreover, some evidence which has been before the Commission might not be before a court, such as the evidence of an accused person whose evidence before this Commission, given under the protection of sec. 5 of the *Canada Evidence Act*, would not be admissible for the prosecution.

In regard to the latter — the evidence given by a member of the R.C.M.P. under compulsion by us — we add that the result of the immediate publication of our Report could be not only that the trier of fact might be aware of the evidence from press reports of our hearings since December 1977, but his memory of that evidence might be refreshed by press reports based on this Report's summary of the accused's testimony, and coloured yet further by our expressions of opinion as to the credibility or otherwise of the accused.

3. In our reasons for decision of May 22, 1980, we drew attention to a fundamental issue — “whether public commissions of inquiry, which have become so common in Canada, should be used as an instrument of the investigation of facts where the government reserves the right to proceed in the courts against the individuals whose conduct is investigated by the commission”. We pointed out that in England, the Royal Commission on Tribunals of Inquiry (chaired by Lord Salmon), reporting in 1966, said:

The publicity... which such hearings usually attract is so wide and so overwhelming that it would be virtually impossible for any person against whom an adverse finding was made to obtain a fair trial afterwards. So far no such person has even been prosecuted. This again may be justified in the public interest because Parliament having decided to set up an inquiry under the Act has already considered whether or not civil or criminal proceedings would resolve the matter and has decided that they would not.

We commented:

Such consideration does not appear so clearly to be given by the Governments of Canada or of the provinces when they appoint commissions of inquiry. In England a commission of inquiry, at least if it is to sit in public, is a mechanism of investigation that should be used only if the decision has been made not to prosecute the individuals whose conduct the Commission is bound to investigate if it is to carry out its mandate.

We might have added that the problem is complicated in Canada, for the federal government, when it appoints a commission of inquiry, has no means of undertaking that a provincial attorney general will not prosecute.

4. The risk of prejudicing the right to a fair trial was recognized by one observer of the Report of an earlier Royal Commission — the Taschereau-Kellock Commission on Espionage. In a dispatch to the Dominions Secretary dated August 22, 1946, the British High Commissioner to Canada, Sir Alexander Clutterbuck, said:

It must be recognized, too, that the Commissioners were placed in a dilemma by having a dual task thrust upon them. According to their terms of appointment, their primary duty was to report on who, in the public service, was involved: but they also had the wider function of investigating

the whole espionage system. But this inevitably means that their Report takes on two self-contradictory qualities — it is not only a commission appointed to report to Parliament on a general question, but also it inevitably constituted itself a judicial tribunal, in effect, to try certain persons of suspected illegal activities, without any actual charge being laid against them. It is fair to the Commissioners to say that this difficulty was inherent in the problem and was an insuperable one. But it has led them to make comments in a public document which cannot fail to be prejudicial to the individual if and when proper judicial proceedings are taken. In certain cases, for example, the Commissioners frankly state that the person questioned was furtive and evasive and that they did not accept his answers.¹

5. The English attitude is illustrated by a statement made by the Attorney General of England, Mr. Samuel Silkin, explaining why it was undesirable to appoint a tribunal of inquiry:

It is absolutely essential, in the interests of justice, that the trial of a person charged with a criminal offence should proceed without any taint being cast on the defendant before the proceedings commence. Indeed, the task of the police in carrying out their investigation would be made impossible by a concurrent inquiry into the very same matters.²

6. It is outside our terms of reference to make recommendations as to the use of commissions of inquiry in cases where the right to prosecute after the commission has published its Report is reserved, unfettered, although we think that governments at various levels should give careful consideration to this problem. However, we do feel it to be “necessary and desirable in the public interest” to comment on, and make recommendations concerning, the consequences of this problem in the situations that are before us.

7. Our recommendation is that, out of regard for the public interest in doing everything that is possible to ensure that members of the R.C.M.P. and others receive fair trials, our report as to these situations ought not to be made public either until the appropriate prosecutorial authority has decided not to prosecute, or has decided to prosecute and the judicial proceedings have been finally concluded.

8. The same concern moved His Honour Judge R.P. Kerans, of the District Court of Alberta (now a member of the Court of Appeal of Alberta), to take a similar approach in his Report under the Public Inquiries Act of Alberta into the affairs of the Cosmopolitan Life Assurance Company. In his Report, Judge Kerans said:

... my comments with respect to possible criminal violations have been isolated and placed in Appendix E, so that the Government may, if it decides to make the balance of the report public, readily segregate this portion of the report and not make it public, at least until after any prosecutions which may be brought are disposed of.

¹ Quoted in H. Montgomery Hyde, *The Atom Bomb Spies*, 1980, London, Hamish Hamilton, and Don Mills, Nelson Canada, p. 78.

² United Kingdom, Parliamentary Debates, November 8, 1978, ed. 975.

It is our understanding that the comments made by Judge Kerans, which were isolated and placed in Appendix E, entitled "A Memorandum Respecting Possible Criminal Violations", were not made public, but that criminal prosecutions did ensue and were carried to their conclusion. At some time the memorandum was made available for inspection by the Legislative Assembly of Alberta, but it was never made public.

9. When we delivered our reasons on May 22, 1980, we referred also to the possibility of disciplinary proceedings. On reflection, we now think that if there is no real possibility of criminal charges but only a possibility of disciplinary proceedings, the same reasoning does not apply. In disciplinary matters the ultimate authority is the Commissioner of the R.C.M.P., and we think that it would be unrealistic and unwise to suggest that he not be aware of any part of our Report; therefore no rationale justifies postponing publication.

10. It goes without saying that we think that sections of our Report should be published if our conclusion as to a particular situation is that no one committed a crime or offence of any kind. In some situations, no doubt, we may come to that conclusion with regard to certain members of the R.C.M.P. but not to others. In that case we think that our Report should not be published until there is either a decision not to prosecute those whose conduct is questioned or until any proceedings against them are completed, but of course the members who are exonerated by us should be so informed. We suggest that they might be wise to refrain from publicizing that fact in case the press should infer that their colleagues have been the subject of an adverse report by us.

11. We remind the reader that in the situations we are speaking of, the *evidence* is already in the public domain, except certain evidence not made public because of considerations of national security or the privacy of individuals or other grounds of public interest. We think that those situations in which we recommend, for the reasons set out above, that publication of this Report be postponed should nevertheless be listed in our published Report so that everyone will know that we have reported on them.

12. We have so far been referring to the publication of this Report as it pertains to the conduct of members of the R.C.M.P., and in particular as it tends to implicate them. Inevitably, postponement of publication may mean that our opinions that exonerate some members, wholly or in regard to certain aspects of their conduct of some members, will not be published at this time. However, the members concerned should have a copy of this Report so that our reasoning may be available to them.

13. However, there is one area explored in this Report that may be of assistance to them and that we consider should be published now without limitation. That is Parts II and III, in which we report on the extent to which Ministers and public servants participated in, or knew of and tolerated acts or practices that were not authorized or provided for by law. In none of these situations do we identify any criminal conduct. Therefore the considerations that motivate us to recommend postponement of publication of sections of our Report concerning acts of members of the R.C.M.P. are inapplicable. There is an additional important consideration. We think that information as to the

extent to which there was such participation or knowledge should be available to counsel who act for any members of the R.C.M.P. charged with offences arising out of the matters upon which we report. For reasons given in detail in Part IV of our Second Report we do not think that this has any bearing on the issue of guilt. However, a court, furnished with the information contained in Parts II and III of this Report, might, on the facts of the case, reach a conclusion in law different from that which we expressed in Part IV of our Second Report. Yet, defence counsel will not have the opportunity of laying before the court the facts found in Parts II and III unless they are published. In any event we recognize that it may have a bearing on the kind of sentence that would follow any finding of guilt.

14. Moreover, the matters reported on in Parts II and III may have a bearing on the exercise of prosecutorial discretion. Therefore those Parts of our Report should, through publication, be available to counsel exercising the discretion, and to defence counsel who may wish to attempt to persuade a Crown Attorney not to prosecute.

15. It is not realistic to assume that our Report can be made available to counsel without the contents becoming public. The contents might be referred to in public by counsel either for the Crown (as, for example, in explaining in court an application for a stay of proceedings where a private prosecution has been launched), or by an Attorney General (as, for example, in making a statement in a legislative body as to why a prosecution has been launched or has been decided against), or by defence counsel (as, for example, when he makes representations as to sentence). If sections of Part II and III are likely to be referred to in this way, it is preferable that the whole be made public at the same time.

16. In addition, there is a public interest at stake that extends beyond the consideration of prosecutions. It would be unfair to the R.C.M.P. as an institution, and to certain past senior members of the R.C.M.P. if our Second and Third Reports were published without Parts II and III. The conduct of these senior members has been the subject of considerable publicity arising from our hearings. Some of them have testified publicly that the government — Ministers — knew that the R.C.M.P. were engaged in illegal activity, and that "the record", if it could be located, would bear out their testimony. In Part II we make findings that do support their testimony to some degree. Non-publication of Parts II and III would be unfair to those witnesses. Moreover, non-publication of Part II would make it impossible for us to report in a public form as to whether the government had knowledge of illegal activity, in a manner that would be balanced and fair to *all* concerned.

17. There are, of course, sections of Part III of this Report that deal with evidence that is already in the public domain. The facts disclosed in most of Part II of this Report have, until now, not been in the public domain. We refer to those sections of Part II that deal with the meetings of the Special Committee of the Security Panel held on November 27, 1970, and of the Cabinet Committee on Priorities and Planning held on December 1, 1970. We recognize that important policy considerations weigh in favour of guarding the

confidentiality of the proceedings of Cabinet and of Cabinet committees. In our reasons for decision dated October 13, 1978, and February 23, 1979, (reproduced in Appendices F and Z to our Second Report) we discussed the governing principle of confidentiality concerning these proceedings. In those reasons we expressed the view that there would be limits to such confidentiality: that if those present became parties to an offence, the protection of confidentiality ought not to apply. That situation does not apply here.

18. Nevertheless, we think it would be unfair to those whose reputations have been put in issue, and who may be faced with criminal charges, if our report in regard to those meetings were withheld from publication.

APPENDIX A

29 June 1978

STATEMENT BY THE COMMISSION'S CHIEF COUNSEL REGARDING THE COMMISSION AND ITS RELATIONSHIPS WITH THE PROVINCIAL ATTORNEYS GENERAL

1. I hope that I may be forgiven if I adopt the, for me, unusual and uncomfortable procedure of reading from a prepared text. The subject of the Commission's relationship with the Provincial Attorneys General is so important that I want to be especially precise in my statements, in particular when I am expressing the views and policies of the Commission. I will, of course, be pleased to answer any questions and enter upon a discussion of any concerns of yours when I have done my reading.

2. I begin by stating that I am authorized to assure you on behalf of the Commissioners that from the outset it has been, and is still, their intention to recognize fully and respect the constitutional responsibilities of the Provincial Attorneys General.

3. Some of your officers, with whom I have spoken or had correspondence, have expressed the view to me that all law enforcement activities within a province are within the exclusive jurisdiction of the Attorney General of the province. The Commissioners neither agree nor disagree that this position represents the current state of the law. They recognize that there are unresolved issues involved and, like you, await resolution of the cases currently before the Supreme Court of Canada.

4. We have studied with some care the contracts between the Government of Canada and the eight "contract provinces" out of a concern to understand the practical problems, as well as the legal situation, with respect to law enforcement. Subject to your views as they may be expressed to me, at least as a practical matter, it appears to me in reading the contracts that the Government of Canada has retained under its control the internal management and the administration of the Force, and therefore can appropriately authorize the kind of inquiry set out in the Order-in-Council under which our Commission is operating.

5. Having said that, however, I want to emphasize that the Commission has recognized from the beginning that very serious problems could arise in determining the correct method of handling information received by it which could indicate the possibility of criminal or other offences — whether on the part of members or former members of the R.C.M.P., or on the part of others.

6. It is common knowledge that certain specific incidents were referred directly to the Commission upon its appointment. Others have been added since by referral and by decision of the Commission, by complaints and by its own research, as well as by matters brought to its attention through the media.

7. Basically, the Commission is established to do two things as defined in its terms of reference. I paraphrase:

1. To investigate and report on the extent and prevalence of any investigative action or other activity of members or former members of the R.C.M.P. which are not authorized or provided for by law.
2. Perhaps more important, it is required to make recommendations about the policies and procedures adopted by the R.C.M.P. in discharging its responsibility for the security of Canada and upon the adequacy of the laws of Canada as they apply to this responsibility.

8. At the time the Commission was appointed, there were already provincial inquiries involving members of the R.C.M.P. being conducted in Nova Scotia, New Brunswick, Quebec and Alberta. Since the appointment of the Commission, we have tried to avoid duplication and overlapping.

9. Perhaps it would be useful if I summarize very briefly the procedures which have been adopted by the Commission. I shall speak, not of the allegations of a national concern which have been referred to the Commission by the federal government, but of those received which are in the nature of complaints by citizens and others across the country.

10. When allegations are received, the first consideration is to ascertain the facts with enough certainty to determine whether the matter comes within the terms of reference of the Commission. Assuming that the investigation by our staff establishes that to be the case, the Commission then decides whether the matter is to be dealt with in some detail and ultimately form the basis of a full report, including recommendations as to whatever further law enforcement actions may be considered appropriate; or, on the other hand, whether in the circumstances it would be in the best interests of the administration of justice to recommend at once that the matter should be referred to the appropriate law enforcement authority. There are obviously going to be cases which fall between these extremes.

11. Perhaps some examples would be useful.

12. The Commission has not begun and, I believe, would not ever begin to investigate an allegation of what I might call a "fresh" murder. Obviously we do not have any such allegation but, if we did, it is my understanding that the Commission would refer it at once to the appropriate Provincial Attorney General.

13. At the other end of the scale, one may infer from the record of the Commission that it intends to deal rather completely with problems arising from mail check operations and the problems posed by electronic and other surveillance. These topics have been the subject of much public controversy here in Canada and elsewhere, which has been going on over an extended period of time.

14. In the case of electronic and other surveillance, which we have been considering under the short description "Surreptitious Entries", clearly we are looking at a course of conduct which has gone on for a long period prior to July 1, 1974 and subsequently. Some of these activities may have involved surreptitious entry which in turn may have constituted civil trespass, offences under provincial law, or even some criminal offence (at least on the part of senior authorizing officers). However, this procedure has been a matter of public concern and knowledge for some time — certainly since the mid-60s — and a matter of public record since 1973.

15. Under this general topic, obviously there are numerous specific instances, yet the principal concern of the Commission so far has been that the events also clearly raise concerns as to what the law is, or should be. It is for this reason that at the conclusion of the first four days of public hearings into this topic, so far as it relates to the Criminal Investigation Branch, copies of the transcripts and the exhibits were sent to each provincial Attorney General in the hope that the views of the Attorneys General might be secured as to the issues raised in the evidence.

16. Having dealt with the foregoing general matters, I should recognize that certain specific concerns have been communicated to us by some Attorneys General or their Deputies. These may be summarized, I believe, as follows:

- (a) The work of the Commission may amount to an interference with the function of the Attorney General of a province as the official bearing the ultimate responsibility for law enforcement in a province. (As indicated, some Attorneys General have taken the position that this is their function exclusively.)
- (b) The work of the Commission could amount to an interference with the due administration of the provincial police force acting (in eight of the provinces) under contract. There has been some concern expressed in this area as to criminal investigation and even as to the activities of the Security Service of the R.C.M.P.
- (c) The work of the Commission could amount to meddling in procedures already established by a province for dealing with complaints regarding the police in performing their provincial policing services; and finally,
- (d) The work of the Commission's staff, in carrying out any investigation in the province, might be regarded as improper in that such investigations are properly the function of the Attorney General and his staff.

17. I believe it is clear that the matters now being inquired into through the *formal hearings* of the Commission do not fall within any of these areas of complaint. However, among some provincial Attorneys General, some concern has arisen as to the activities of our investigators in following up upon complaints received by the Commission from the public. It may be well, therefore, for me to deal even more precisely with the procedures which have been adopted by the Commission in this connection.

18. We have approximately 200 complaint files which have been received from residents of every province with the exception of Newfoundland. I have a staff of seven investigators who have been engaged since November in contact-

ing each one of these persons to ascertain the details of the complaint. When these details have been secured, my instructions to the investigators are that the reports are to be forwarded to me. I then prepare summaries and forward them to the Commissioners who decide what action, if any, is to be taken by the Commission.

19. I am sure that many of the names of these complainants are well known to officers in your departments because a great number of them have been chronic complainers to those bodies which have been established to listen to complaints.

20. We have not yet completed this review. In some cases, in addition to our investigators discussing the matter with the complainants themselves, we have checked at R.C.M.P. headquarters to see whether or not there are any files relating to the complainants. In a *very few* cases, we have authorized our investigators to interview the R.C.M.P. officers involved. I must confess that in one or two cases, particularly at an early stage in the work of the Commission (and latterly in what might best be described as an excess of zeal or an attempt to save travelling expenses), my instructions that no R.C.M.P. officers are to be interviewed until the Commission has reviewed the file have been breached. This has resulted in my speaking to some of you on the telephone before today, but I am sure that, in general, the instructions are being carefully observed.

21. I am sure it will not come as any surprise to you that the Commission has already closed a number of these files. Some have been closed because the complainants are obviously mentally disturbed, and some because the complaints have already been fully dealt with, either by provincial courts or by provincial administrative tribunals set up to deal with such complaints.

22. There may indeed in the end be some of these public complaint files which the Commission will decide should be the subject of a hearing, but these have not as yet been identified.

23. It is not the intention of the Commission to substitute itself for provincial tribunals established to consider and deal with complaints against the police arising out of their law enforcement activities. However, the Commission is charged with reporting upon the extent and prevalence of investigative actions and other activities that are not authorized or provided for by law, and this gives rise to practical problems.

24. I would welcome suggestions from the provincial Attorneys General as to how this responsibility can be discharged by the Commission without in any way interfering with the constitutional or legislative jurisdiction of the provincial authorities.

25. In this regard, may I suggest that it would be of great assistance to the Commission, to me, and to my staff, if each of the provinces could direct an officer of the Attorney General's staff to send to me an outline, together with the appropriate statutory references, of the procedures which do exist within the province to deal with complaints concerning the police arising from their law enforcement activities.

26. I would appreciate your views as to the most practical way to deal with those few cases in which we may wish to interview officers or examine files which may relate to police procedures in performing provincial police services as defined in the policing contracts.

27. It has also occurred to me that, when our review of the complaints has been completed, we might be able to furnish the appropriate officer in each of the offices of the Attorneys General with a statistical summary, indicating the nature and frequency of the complaints which we have received and the period of time covered, in order to invite the provincial Attorneys General to provide the Commission with a comparison between the number of complaints the Commission has received and the number of complaints dealt with by provincial authorities. I would welcome a reaction to this suggestion.

END