# 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

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 Poupette 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 Poupette 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 "Poupette" 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 "Poupette" or of "Operation Poupette" 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 "Poupette" or "Operation Poupette", 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 "Poupette" or the name or meaning of "Operation Poupette".

**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 Poupette" 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 Poupette 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 Poupette 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 Poupette 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 Quebec, 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 Québecois. (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 Bachand, 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 Bourrassa 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, early November — 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.

November 4 — A bomb exploded at Rouyn. Four young persons were injured while handling the bomb and were arrested.

November 5 — A communiqué from the Front de Libération de l'Abitibi-Témascamingue 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 and 19 — According to R.C.M.P. files, another police force's source 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 Québecois.

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 Superintentent 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 interpet 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 vehice. 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. McMorran 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. McMorran, 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. McMorran, at which the first exchange of information took place about the proposed meeting between Mr. Allmand and Mr. Douglas. Mr. McMorran 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 McMorran 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. McMorran 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 McMorran first discussed taping the Allmand-Douglas meeting. Both Mr. Plummer and Mr. McMorran 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. McMorran said "should we tape the bastard?" It is the evidence of Messrs. Plummer and McMorran 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. McMorran, 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. McMorran 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. McMorran 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 McMorran, 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 McMorran thought that Mr. Allmand would offer Mr. Douglas a job, and that Messrs. Plummer and McMorran 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. McMorran 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. McMorran made it clear to us that they were interested in whether Mr. Allmand would offer Mr. Douglas a job. Mr. McMorran 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. McMorran 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. McMorran 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

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 accidently 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

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 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) | 19 | 3.75 |
| Investigation (improper or inadequate) | 53 | 10.75 |
| Mail openings and intercepts | 29 | 5.75 |
| Murder | 2 | 0.5 |
| Obstruction of justice | 16 | 3 |
| Perjury | 6 | 1.25 |
| Screening and clearances (improprieties during) | 9 | 2 |
| Searches | 17 | 3.5 |
| Surveillance (electronic and physical) | 33 | 6.5 |
| Thefts | 15 | 3 |
| Threats | 13 | 2.5 |
| Training (inadequate) | 4 | 0.75 |
| Warrants (improper use of) | 4 | 0.75 |
| TOTAL | 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 arrythmia, 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 frustation, 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 be 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.

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[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 occurence 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 grievious 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 Personel, 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 a 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 marihuana and imported and sold come 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 courrier to pass heroin to an undercover member (note that the R.C.M.P. contest the statement that the informant used O as a courrier). 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 courrier 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 courrier 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]

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[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 "All 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 repect 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.