PART V

SPECIFIC CASES REFERRED FOR POSSIBLE DISCIPLINARY ACTION

INTRODUCTION

1. The incidents which we describe in this Part involve conduct which, in our view, does not require reference to an appropriate authority for determination as to whether there ought to be prosecutions. The conduct of the R.C.M.P. members is such, however, that we consider that it ought to be reviewed to determine whether internal disciplinary proceedings should be brought against such persons as are still serving members of the R.C.M.P.

2. Each chapter in this Part relates an incident, or incidents, falling within the category of conduct which we described in Part III, Chapter 1, of our Second Report as follows:

> The common thread which we have detected running through these incidents is that of a willingness on the part of members of the R.C.M.P. to deceive those outside the Force who have some sort of constitutional authority or jurisdiction over them or their activities. We have come to this conclusion reluctantly and regretfully because in our view it might well be the most serious charge which we are levelling against the Force in our Report. Nevertheless, we are convinced that the practice existed. We have received evidence that federal Ministers of the Crown responsible for the R.C.M.P. were misled by the R.C.M.P. and that on other occasions relevant or significant information was intentionally withheld from Ministers. There is evidence that the same thing has occurred at the provincial level with respect to a provincial minister. There is also evidence that there was a similar approach adopted by the Force in dealing with senior public servants.

It is not only the chapters of this Part which contain elements of deceit. Some of the chapters of Parts IV and VI also describe conduct of the same nature. However, for reasons explained in the introduction to Part IV, we are not making recommendations as to referral for possible disciplinary proceedings with respect to conduct examined in the chapters of that Part, whereas the conduct reviewed in the chapters in Part VI may, in our view, constitute not only conduct that may give rise to disciplinary proceedings but also illegal activity, and our report as to those forms of conduct is therefore not included in this Part.

CHAPTER 1

MEMORANDUM OF AN OFFICER OF THE R.C.M.P. CONCERNING THE INCOME TAX

Summary of facts

1. In Part III, Chapter 6, of our Second Report we described the circumstances surrounding a memorandum, dated January 19, 1968, sent by Inspector J.G. Long to Chief Supt. J.E.M. Barrette. In the memorandum, Inspector Long acknowledged that the provision of information to the Security and Intelligence Directorate by a source in the Department of National Revenue was a violation of the Income Tax Act. He therefore recommended that no opinion should be sought from the Department of Justice on the question since that opinion could only be that there was a contravention of the Act and receipt of such an opinion would place the Security and Intelligence Directorate in the position that, if it continued with the practice, it would be "in contravention of a recent and explicit ruling from the legal officer of the Crown".

Conclusions

2. We acknowledge, of course, that an opinion from the Department of Justice does not determine whether a matter is or is not legal, and therefore, would not have affected the legality of the practice. We consider that, if doubt existed as to legality, it would have been quite improper not to seek an opinion for fear that it would be adverse. However, to acknowledge that the practice was clearly illegal, as Inspector Long had done, and then to recommend that no legal opinion be sought because this would aggravate the situation, is, in our view, even worse and is unacceptable. It shows a complete disrespect for the law and for the legal process within government designed to ensure compliance with the law.

CHAPTER 2

APPLICATION TO PROVINCIAL ATTORNEYS GENERAL FOR LICENCES UNDER SECTION 311 OF THE CRIMINAL CODE

Introduction

1. The summary of facts in this chapter was extracted from the documents which were contained in R.C.M.P. files. We heard no testimony on the topic. We did, however, receive representations in response to notices given by us pursuant to section 13 of the Inquiries Act.

Summary of facts

2. In the early 1960's General Motors supplied their dealers with master keys for GM automobiles. No controls were placed on the sale or possession of those keys. Consequently, they became available commercially. There were large increases in theft of GM automobiles. In an attempt to combat the increased theft, section 311 of the Criminal Code was passed in 1969 and came into force on January 1, 1970. That section reads:

> 311.(1) Every one who
>
> (a) sells, offers for sale or advertises in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province, or
>
> (b) purchases or has in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province,
>
> is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) A licence issued by the Attorney General of a province as described in paragraph (1)(a) or (b) may contain such terms and conditions relating to the sale, offering for sale, advertising, purchasing or having in possession of an automobile master key as the Attorney General of that province may prescribe.
>
> (3) Every one who sells an automobile master key
>
> (a) shall keep a record of the transaction showing the name and address of the purchaser and particulars of the licence issued to the purchaser as described in paragraph (1)(b), and
>
> (b) shall produce such record for inspection at the request of a peace officer.

(4) Every one who fails to comply with subsection (3) is guilty of an offence punishable on summary conviction.

(5) For the purposes of this section, "automobile master key" includes a key, pick, rocker key or other instrument designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles.

It will be noted that simple possession of an automobile master key, without a licence, is an indictable offence.

3. The basic recommendations to the Government of Canada for the new legislation came from the R.C.M.P. Apparently at an earlier Dominion-Provincial Conference on Organized Crime the Minister of Justice of Quebec had raised the matter.

4. In a memorandum of May 13, 1971, Corporal A.E. Fry, a member of the Security Equipment Section in "F" Division (Saskatchewan), noted that a recent request to give evidence in a British Columbia case had identified the problem that no exemption had been provided in the legislation for the possession of automobile master keys by peace officers, and he therefore asked Chief Superintendent E.R. Lysyk, the Officer in Charge of C.I.B. at "F" Division, for policy guidance with respect to his possession of automobile master keys. Cpl. Fry's concern was forwarded by Chief Superintendent Lysyk to Headquarters. At Headquarters the matter was referred to the Legal Branch. In a memorandum dated June 23, 1971, Inspector J.V. Cain, the Officer in Charge of the Legal Branch, advised the Officer in Charge of C.I.B. at Headquarters, Superintendent J.R.R. Quintal, that,

> . . . possession of automobile master keys. . . is prohibited unless the Attorney General of the Province has issued a licence authorizing their use. Consequently if charged under s. 295 B [now section 311], it would be of no avail for the possessor to show that he had *lawful excuse* to use the keys; the only successful defence would be a licence issued by the Attorney General.

He added a hand-written note to the memorandum as follows:

> As a post-script, should Cpl. Fry be required to cross Prov'l Boundaries, it would be necessary (on any operation) for him to have his "licence" from those particular A.G.'s. As an interim solution, perhaps the CIB Officer "F" Div. could write to his 4 Western counterparts seeking a "concensus" on the matter. My feeling is that each would be receptive (each AG that is) especially if the proposal contained the suggestion that "possession by our specified officers is intended to provide a service" as opposed to an objective which is "repugnant" (i.e. need to obtain evidence illegally).

5. By memorandum dated July 2, 1971, Sub/Inspector D.A. Cooper, the Assistant C.I.B. Officer at Headquarters, raised with Mr. Quintal the fact that pick sets had been issued to C.I.B. Services Sections in all divisions as well as to a number of investigators. He pointed out that this also included S.I.B. and the Security Equipment Section at Headquarters. He suggested that licences be obtained from all attorneys general including those of Ontario and Quebec. Mr. Quintal referred the matter, on July 5, 1971, to the Director of Criminal Investigations with the following note:

Sir:

A serious question has been raised which requires a decision.

I think we should

(1) advise C.O.s which members have been issued with this equipment;

(2) ask those contract divisions to approach their A.G.s in this regard;

(3) ask S.G. to obtain licence from A.G. of Ont. and Que.;

(4) I think they must be to specific members and not the Force in general.

We were advised by Mr. Quintal's counsel that Mr. Quintal was transferred on August 9, 1971, from Officer in Charge, C.I.B., to Departmental Advisor on Bilingualism.

6. In a letter dated October 21, 1971, from Sub/Inspector Cooper to the Commanding Officer of "F" Division, it was pointed out that the request from that Division had "... been examined in the overall context as it relates not only to Security Equipment Section personnel but also G.I.S. and Security Service members across the Force who use lock pick equipment as well as automobile master keys". "F" Division was instructed, as a pilot project, to approach the Saskatchewan Attorney General to obtain a licence. The instructions went on as follows:

> In the application for this licence it should be stressed that possession by our Cpl. Fry is intended to provide a service (expert court testimony re examination of master keys, etc., found in possession of a criminal(s)) as opposed to an objective which is repugnant as we do not wish to officially acknowledge at this time that possession of these aids would be used to obtain evidence illegally (surreptitious searches.)

7. By letter dated October 26, 1971, Chief Superintendent Lysyk wrote to the Deputy Attorney General of Saskatchewan to apply for a licence. The text of the letter read as follows:

> 1. We have on staff at this Headquarters a fully trained member in the field of lock testing and examination and his services are called upon frequently to assist Detachments on investigations in relation to his knowledge and experience in this field.
>
> 2. In order for this member to give expert testimony relating to his field, it is essential that he experiment with all types of locking apparatus familiar to the criminal element. In this regard the possession of automobile master keys and lock picks are necessary. I would therefore respectfully request that a licence be issued by the Attorney General pursuant to Section 311(2) of the Criminal Code authorizing Cpl. A.E. Fry of this Headquarters to possess such instruments for the purpose outlined.
>
> 3. You will appreciate, I am sure, that should our member be called upon to give expert evidence in relation to his examinations, that some embarrassment would result should it be learned that his examination and tests were conducted with the aid of devices which have not been licenced by the Attorney General.
>
> 4. As there is some urgency to this request, I would ask that your early consideration be given, please.

It will be noted that this letter talks only of "lock testing and examination" and makes no mention of the fact that the member would be using the automobile master keys during the course of operations.

8. On November 2, 1971, the Attorney General for the Province of Saskatchewan issued a licence to the member on whose behalf the application had been made. That licence read as follows:

> LICENCE UNDER SECTION 311
> OF THE CRIMINAL CODE
>
> I, ROY JOHN ROMANOW, Attorney General for the Province of Saskatchewan, by virtue of the power vested in me by section 311 of the Criminal Code do hereby authorize and licence CORPORAL A.E. FRY, a member of the Royal Canadian Mounted Police attached to "F" Division Headquarters, to purchase and have in his possession an automobile master key or keys, and keys, picks, rocker keys or other instruments designed or adapted to operate the ignition or other switches or locks of a series of motor vehicles, and coming within the definition of "automobile master key" contained in subsection (5) of section 311 of the Criminal Code for use in connection with his duties with the Royal Canadian Mounted Police including experimenting with all types of locking apparatus in order that he may be able to give expert evidence in relation to the use of such automobile master keys, picks, rocker keys or other instruments.
>
> DATED at Regina, in the Province of Saskatchewan, this 2nd day of November, 1971.

9. In reporting, by letter dated November 12, 1971, to Headquarters on the receipt of the licence Chief Superintendent Lysyk made reference to Mr. Cooper's letter of October 21, 1971. Mr. Lysyk, in referring to the licence, said:

> The term "for use in connection with his duties with the Royal Canadian Mounted Police" is not, in our opinion, restrictive in any way.

Mr. Lysyk made representations to us in writing and through his counsel with respect to his role in this matter. He explained that role in a letter dated January 27, 1981, addressed to his counsel. That letter was filed with us as part of Exhibit UC-40. In it Mr. Lysyk says that he "... cannot recall seeing S/Insp. Cooper's memorandum of 21 October '71 at any time prior to seeing it at your office in January 1981 and feel[s] it is in the realm of good probability "the system" would cause it to by-pass [his] desk".

10. In a memorandum dated November 22, 1971, Sub/Inspector Cooper asked Staff Sergeant Jensen, the N.C.O. in charge of the Security Equipment Section at Headquarters, to provide him with a list of members for whom licences were desired, and he said that he would then refer the list to the Commanding Officer of "O" Division for the necessary action. He pointed out that the licence would be for Ontario only and would be "... only to justify your possession of picks, etc., in Ontario and Quebec (if you want Quebec)". He said that the fact that they did not have licences for the other provinces was not a major concern "... as main requirement other locations would be for court testimony and don't need a licence for that aspect".

11. By a telex dated September 22, 1977, the Commissioner of the R.C.M.P. requested that all operational policies of the Force be reviewed.

12. An undated memorandum, prepared subsequently to November 3, 1977, indicates that in 1966 a complete set of automobile master keys was obtained by the Technical Development Branch of the Security Service through the Crime Detection Laboratories of the R.C.M.P. The memorandum points out that "... it is an offence under section 311 of the Criminal Code of Canada ... for a person to have in his possession in a province an automobile master key otherwise than under the authority of a licence issued by the Attorney General of that province". The memorandum recommends as follows:

> Because these keys have not been used by "J" Operations since they were acquired in 1966, and the legal implications under the Criminal Code of Canada it is recommended that the set of Automobile Master Keys presently held in safekeeping by "J" Operations be returned to Security Engineering Section.

13. In a memorandum dated June 1, 1978, from Inspector D.P. Pederson on behalf of the Assistant Officer in Charge, Security Engineering Branch, to the Director of Protective Policing, section 311 was cited and it was pointed out that members of the Security Engineering Branch and of Security Engineering Sections in the field carried instruments which fell within the definition of automobile master keys. It was stated that, as a first step to complying with section 311, the Branch would like to obtain licences for appropriate members from the Attorney General of Ontario. It was recommended that when that had been completed the Branch should advise divisions to acquire licences for their section members. It was also pointed out that instruments falling within the definition in the Code were common to both the "... routine service and maintenance work [Federal Security Equipment] of the Branch ... as well as [their] operational assistance role, thus Section members involved in both areas should be licenced."

14. In a letter dated June 14, 1978, from Chief Superintendent D.W. McGibbon, Assistant Director, Protective Policing, to the Attorney General of the Province of Ontario, licences were sought for five members of the Security Engineering Branch at Headquarters. In that letter the role of the Branch was described as follows:

> The Security Engineering Branch of the Royal Canadian Mounted Police is responsible for planning, developing and coordinating programs for the research, design, development, testing and evaluation of security equipment; structural engineering involving the selection and application of security hardware and systems, structural materials and building designs; and electronic Security Systems to ensure the protection of the assets, property, personnel and information of the Federal Government.
>
> This responsibility includes the service and maintenance of security equipment and locking systems for the Federal Government. In order to perform these duties the Security Engineering Branch technicians are required to have in their possession locksmithing tools, lock picks, or other instruments designed to operate locks and locking systems.

These lock technicians are also involved in the testing and evaluation of locks and locking systems proposed for use by the Federal Government Department.

These technicians must therefore work with all types of locksmithing tools and equipment used to defeat locks and locking systems in order to properly evaluate security equipment.

Included in the mandate of the Security Engineering Branch is the requirement to train R.C.M.P. members to fill Security Engineering field sections within the various Divisions. These trainees are transferred to Ottawa where they spend 12 to 18 months on an in-service training program. Each trainee is under the direct supervision of a senior SEB technician during this training period.

15. On July 19, 1979, licences, as requested, were issued by the Acting Attorney General of the Province of Ontario. They were stated to be issued to the members

> . . . in connection with the performance of their duties as police officers, including the training of police officers under their supervision. . .

16. In the course of the correspondence leading up to the issuance of the licences the Director of the Crown Law Office in the Ministry of the Attorney General, Province of Ontario, wrote to the Assistant Director, Protective Policing, R.C.M.P., on September 7, 1978, stating as follows:

> I apologize for the delay in answering your request for a licence pursuant to section 311 of the *Criminal Code*. It has raised an interesting question. To my knowledge, it is the first application under Section 311 and as such required careful consideration which delayed our reply to you.

In subsequent correspondence from Chief Superintendent McGibbon, no mention was made to the Ontario Attorney General's office of the fact that a licence had been obtained several years earlier in Saskatchewan. The Security Engineering Branch had suggested that the office of the Ontario Attorney General be provided with copies of the material on the "F" Division experience in Saskatchewan but that suggestion did not meet with favourable consideration.

17. According to a memorandum dated November 7, 1979, from Assistant Commissioner J.U.M. Sauvé, the Director of Protective Policing, to the Officer in Charge, Operational Task Force, because General Motors had improved and redesigned their locks ". . . to the point where these 'master keys' are of little or no concern particularly as the earlier models disappeared from the scene, . . ." section 311 of the Code is essentially obsolete. However, because ". . . the Commissioner directed during the McDonald Inquiry that all operational areas of the Force ensure that they are scrupulously adhering to the letter of the law, this Branch sought and received licences in accordance with 311, . . .".

18. By memorandum dated April 25, 1978, from Chief Superintendent R.R. Schramm, the Officer in Charge, Criminal Operations, to the Officer in Charge, Protective Policing, the question of possession of keys was dealt with. Chief Superintendent Schramm states:

> . . . I have concluded that the retention of keys after the expiration of the lawful authority, i.e. Search Warrant, Court Authorization to intercept private communications, Writs of Assistance used in a specific investigation on reasonable and probable grounds, is probably a criminal offence and most certainly contrary to the spirit and intent of existing legislation.

He then discussed section 309(1) of the Criminal Code which deals with house breaking instruments. He instructed that all keys that the Security Equipment Section had ". . . which fall within the category of house breaking instruments..." be destroyed forthwith. He said that the Security Equipment Section must only render assistance to operational units when entry will be made upon premises when there is a valid search warrant, valid court authorization to intercept private communications or when there is a writ of assistance in an emergency situation when it is not possible to obtain a search warrant. He said ". . . under no other circumstances shall entry to premises be made. This includes entry of private vehicles, etc."

19. By a further memo dated April 26, 1978, from Chief Superintendent Schramm to the Officer in Charge, Detachment Police, the Officer in Charge Divisional Management Audit Unit and the Area Commander of the Security Service in South West Ontario, a copy of the memorandum of April 25, 1978, was forwarded for the information and guidance of all members under their command. He stated that

> . . . it goes without saying that the principles enunciated in the attached memorandum to the O.i/c Protective Policing concerning these matters apply equally to all members and not only to S.E.S. Therefore, should any member have a key(s) which may have been obtained during the course of a previous investigation, such key(s) is to be destroyed forthwith.

He added:

> As all members will appreciate, the Force must at all times carry out its duties within the bounds of the law. What necessarily flows from this fundamental principle is that we must ensure the legality of *all* our investigative practices and procedures. This is essential in order that the Force may continue to maintain the trust and confidence of the people of Canada.

Conclusions and recommendations

20. There are two aspects of this matter with which we propose to deal. The first is the application to the Attorney General of the Province of Saskatchewan for a licence under section 311 of the Criminal Code. The second is the possession of automobile master keys by members of the R.C.M.P. after passage of section 311 of the Criminal Code.

21. Counsel for Messrs. Cain, Cooper, Lysyk, and Quintal submitted that there is a distinction to be made between the meaning of the words "deceive" and "mislead". He said that the word "deceive" included an element of intent whereas the word "mislead" did not necessarily include any intent. He cited in support of his submission several judicial decisions interpreting the meaning of those words in different statutes. We accept the distinction drawn by him and when we use the words "deceive" or "deception" we mean that what was done was done, in our opinion, with the intention to mislead.

22. We are shocked by the deception practised on the Attorney General of Saskatchewan by the members of the Force involved. The documentation clearly discloses that the intended recipient of the licence would be using the automobile master keys in his possession for two purposes: one — "lock testing and examination" — was disclosed in the application; the second — the use of the keys to surreptitiously enter vehicles during the course of specific operations — was intentionally withheld from the Attorney General. We are also shocked that the suggestion that the matter be approached in this fashion first came from Inspector Cain, the Officer in Charge of the Legal Branch of the R.C.M.P. He clearly counselled not making a full disclosure to the attorneys general of the four western provinces when he wrote that ". . . each would be receptive (each A.G. that is) especially if the proposal contained the suggestion that" possession by our specified officers is intended to provide a service "as opposed to an objective which is" repugnant "(i.e. need to obtain evidence illegally)".

23. It is disturbing that Mr. Quintal did not nip this matter in the bud. Having received Mr. Cain's memorandum of June 23, 1971, Mr. Quintal appears either not to have recognized the seriousness of what Mr. Cain was counselling or to have ignored it. We note that in his handwritten memorandum of July 5, 1971, to the Director of Criminal Investigations, in which he makes his recommendations as to what he thinks the procedure ought to be to resolve the problem, he makes no reference to Mr. Cain's proposal.

24. Unfortunately, Mr. Cain's counselling was picked up by Sub/Inspector Cooper in his instructions to the C/O of "F" Division. Those instructions were followed, without further question, by Chief Superintendent Lysyk in making the application by "F" Division. However, because of the representations made to us by Mr. Lysyk we are not prepared to conclude that he was aware of the intention to deceive the Saskatchewan Attorney General. There can be no excuse for the conduct on the part of those who participated in this deception. We recommend that this chapter of our Report be forwarded to the Attorney General of Saskatchewan.

25. The second point of concern to us is the continued possession by members of the Force of automobile master keys after passage of section 311 of the Criminal Code. Immediately upon passage of that section it should have been obvious to the Force that possession of an automobile master key in a province, without a licence from the Attorney General of that Province, was an indictable offence. That fact does not appear to have been apparent to anyone until 1971 when it was raised by Cpl. Fry in "F" Division. In June 1971, Inspector Cain, the Officer in Charge of Legal Branch, advised the Officer in Charge of C.I.B. that anyone in possession of an automobile master key would have no defence unless the licence had been issued by the Attorney General. With the exception of the licence issued to one member in "F" Division, no further licences were issued until the Attorney General of Ontario licenced five members in July 1979. It is obvious from the documentation that between 1971 and 1979 many members of both the C.I.B. and the Security Service were in possession of automobile master keys. Such members included both investigating officers in the field and personnel in the Security Equipment Section and

Technical Development Branch at Headquarters. It was not until April 1978 that instructions were given to members of the Force to destroy all keys in their possession which were not being used in current investigations in which there was a valid search warrant, valid court authorization to intercept private communications or a writ of assistance. During the seven-year period, as far as can be determined from R.C.M.P. files, from the time the legal opinion was given by the Officer in Charge of the Legal Branch until the order was given to destroy all keys, with the exception of Mr. Quintal's memorandum to the D.C.I., no concern appears to have been expressed about the fact that all members of the Force who were in possession of such keys were probably in violation of the Criminal Code. This is a serious illustration of an attitude within the Force that the law did not apply to it.

CHAPTER 3

DESTRUCTION OF CHECKMATE FILES

Introduction

1. In our Second Report, Part III, Chapter 7, we referred briefly to some countering measures carried out by members of the Security Service in the years 1971 to 1974 under the umbrella code name of Checkmate. In Part V, Chapter 6, of the Second Report we discussed the kinds of countermeasures which we think may appropriately be carried out in the future by Canada's security intelligence agency. In Part VI, Chapter 12, of this Report we discuss a number of the specific Checkmate operations. In the present chapter we examine the circumstances in which members of the Security Service destroyed the contents of files relating to those operations and the general file that contained discussion about proposed but unexecuted operations. Most of the evidence with respect to the destruction of the Checkmate files was heard *in camera* in Ottawa on November 6, 7, 13, 18 and 25, 1979, and on February 12, 1980. The testimony of former Commissioner Nadon was heard in public on October 30, 1979 (Vol. 136). *In camera* testimony was given by Commissioner Nadon, Superintendent Robert Gavin, Superintendent R. Yaworski, Chief Superintendent G. Begalki, Staff Sergeant James Thomson, Staff Sergeant Ervin Pethick and Sergeant R.G. Hirst. The *in camera* testimony is found in Volumes C57, C60, C63, C64 and C84. It was released publicly in edited form in Volumes 300, 305, 302, 303, 304 and 306 (listed in the corresponding order). Representations were made by one of the participants and his counsel, in response to a notice given pursuant to section 13 of the Inquiries Act (Vol. C129).

Summary of facts

2. The files relating to Operation Checkmate were destroyed by the Security Service after undergoing two separate and independent internal file reviews — one in 1974-75 and one in 1977.

(a) Phase One (1974-75)

3. Staff Sergeant Yaworski was the N.C.O. responsible for the Special Operations Group (S.O.G.) that supervised Operation Checkmate. In a series of discussions in November or December 1974 with Deputy Director General (Operations) Draper, Staff Sergeant Yaworski recommended that the Checkmate files be destroyed. Mr. Yaworski has no recollection as to whether his immediate superior, Superintendent Begalki, was part of these discussions. After discussing other alternatives, including the complete destruction of the files, Mr. Yaworski and Mr. Draper eventually decided to destroy those parts

of the Checkmate files which related to mere proposals for operations, and, in all Checkmate files which related to completed operations, to prepare summaries before eliminating certain materials from the files. Mr. Yaworski then instructed two members of the Security Service — Sergeant Hirst and Corporal McMartin — to carry out the actual destruction. The Checkmate files comprised approximately 25 volumes in total, and those which contained only proposals for operations were sent immediately to "F" Operations (Records Management) for destruction. No file assessment forms were prepared for them. Mr. Hirst and Mr. McMartin then prepared summaries of the contents of those files which related to completed operations. Mr. Yaworski personally reviewed all of these summaries. After returning these files to Mr. Hirst, Mr. Yaworski says that he assumed that these Checkmate files and the attached summaries would then be returned to form part of the permanent records registry system within the Security Service. Mr. Yaworski reported verbally to Mr. Draper in May 1975 that no attempt was made to record the contents of the files relating to the proposed review process. Although Mr. Begalki was Mr. Yaworski's immediate superior, Mr. Yaworski has no recollection whether he also reported to Mr. Begalki; nor does he know whether Mr. Draper discussed this destruction with Mr. Dare. In a subsequent telex authorized by Mr. Draper, instructions were given to individual field units to destroy any corresponding Checkmate files that they might hold.

4. Mr. Yaworski testified that he recommended the destruction of the Checkmate files to Mr. Draper for one principal reason. By November 1974 he was of the opinion that many of the operations which had been carried out under the code name 'Checkmate' were "wrong". He came to that conclusion in large part due to his increasing awareness of mounting public criticism in the United States of comparable programmes which had been carried out by the F.B.I. Since there had been recent instances of leakage of government documents, Mr. Yaworski was very much concerned about the possibility of the disclosure of what he considered to be "very sensitive" and "very explosive" information and about probable consequent embarrassment to the Security Service as a whole. The purpose of the summaries, as he explained it in his testimony, was simply to reduce the volume of material on the files so as to lessen the possibilities of exposure of Operation Checkmate. Although Mr. Yaworski admits that the Security Service would thereby be placed in a less advantageous position in the event it became necessary to answer future questions about Checkmate, he nevertheless insists that his aim was to reduce the risk of leaks to the media or to the government, by eliminating the bulk of the documents on the files. In giving instructions for the actual destruction, Mr. Yaworski relied upon the fact that the Deputy Director General (Operations) had given his consent to destroy the files and, therefore, Mr. Yaworski says, he did not consider the standard criteria for destruction contained in the "I" Directorate Manual and the Specific criteria for destruction applicable to the "938" category which had been assigned to the Checkmate files. Mr. Yaworski was able to overcome the objections of the N.C.O. in charge of "F" Operations by persuading him that the Checkmate files did not properly belong to category "938" and by indicating to him that the Deputy Director General

(Operations) had already given his approval for this particular destruction procedure.

5. Mr. Hirst says that he regarded the instructions he received as an unusual procedure since it was not carried out according to the regular file review programme. The files were divided between Mr. Hirst and Mr. McMartin, with the former given approximately 18 to 20 files and the latter the rest. Mr. Hirst prepared only five or six summaries which he gave to Mr. Yaworski to review. No copies were made of any of these summaries. Mr. Hirst had complete discretion in this review which took place sometime in late 1974 or early 1975. He did not consider any of the material on the files to be of potential operational value to any other branch. He therefore removed all documents except extracts from other files and any independent research that had been done by the section. No file review forms were completed. He was personally responsible for placing in the secret waste all of the material which had been earmarked for destruction. After typing one or two of his handwritten summaries, he placed them with the remainder of the files in a safe and, when he was transferred in December 1976 left them in the custody of the N.C.O. in charge of the S.O.G. All of this material was apparently in the same condition when he returned to review the files in 1977.

6. When he was first given the Checkmate files to review, Mr. Hirst recommended to Mr. Yaworski against total destruction for two main reasons:

(1) The impossibility of eliminating an entire category of files because of the nature of the extracting process whereby references to each of the Checkmate files would appear in many other files scattered throughout headquarters and the division and,

(2) the impossibility of destruction of a whole category of files since some portions of the Checkmate files would have already been copied at the command level.

7. In spite of the reservations expressed by Mr. Hirst, Mr. Yaworski decided to proceed with his and Mr. Draper's alternative plan for partial destruction.

(b) Phase Two (1977)

(i) Evidence of Sergeant Hirst

8. According to Mr. Hirst, when he returned to the S.O.G. in March or April of 1977, Chief Superintendent Begalki instructed him, in the presence of Staff Sergeant Pethick, to complete the review of the Checkmate files.

9. Mr. Hirst testified that, when Chief Superintendent Begalki instructed him to finish the review of the Checkmate files, Mr. Begalki merely indicated that the S.O.G. was being phased out and that the Checkmate files would no longer be of any operational value. Mr. Hirst says that he raised some objections with Mr. Begalki over the proposed wholesale destruction of the files. Mr. Hirst says that he pointed out to Mr. Begalki that a prior review of the files had taken place in 1974-1975 and explained some of the problems which both he and Mr. Yaworski had encountered, at that time, in contemplating the destruction of an entire category of files. Although Mr. Hirst told us that he "discussed" with

Mr. Begalki the potentially "very explosive" nature of what little material was still on the files, he did not tell us whether he explained what he meant by that or that he told Mr. Begalki that the "problems" involved possible illegalities. He has no memory as to what Mr. Begalki said. His testimony is clearly that what he told Mr. Begalki was that in 1974 the main consideration was that the files were no longer of value, and that Mr. Begalki gave the same reason for deciding that they should be destroyed. In carrying out his review, Mr. Hirst decided to destroy almost all of the remaining contents and summaries because he could find nothing of operational or historical value. Having done this, he delivered what was left of the files to Staff Sergeant Pethick.

10. Although Mr. Hirst prepared a file review form for each file, he did not prepare any list of, or report concerning, the material he had destroyed. He himself remembers little of the actual file contents. He had no further discussions with anyone concerning the destruction which he had carried out.

11. In conducting his review, he says that he was never aware of the possible establishment of a Commission of Inquiry or of a possible moratorium on the destruction of files. He was not instructed by Mr. Begalki and did not himself look for any illegalities in the files during his review process.

(ii) Evidence of Chief Superintendent Begalki

12. According to Mr. Begalki, the only review and destruction of the Checkmate files was carried out under his personal instructions in May and June 1977. As Officer in Charge of "D" Operations (the Countersubversion Branch), Mr. Begalki instructed Staff Sergeant Pethick to conduct a review of the Checkmate files with a view to their eventual destruction. Any material which was retained after Mr. Pethick conducted his review was transmitted to another active file. No record was kept of the file to which this information was transferred. The remainder of the files were then sent to "F" Operations for the purpose of undergoing a second assessment. Mr. Begalki approved this portion of the destruction process by writing a memorandum on May 3, 1977, to that effect. He also sent a list of the files to be destroyed to Superintendent Gavin who was Officer in Charge of "F" Operations.

13. In giving his reasons for authorizing this review and destruction, Mr. Begalki said that the S.O.G. was winding down and therefore some of its files had become obsolete. He could see nothing of any future operational or historical value in them. Moreover, he regarded them as superfluous in the sense that the subjects of any reports submitted by deep cover agents, who had been involved in the Checkmate programme, would already be contained in various other files throughout the regular filing system. He distinguished the assessment of the Checkmate files from that of other files (which were reviewed at the same time and were also considered to be redundant, working files) on the basis that material in those files was retained because it was of historical significance. Mr. Begalki says that he believed that the S.O.G. files did not form part of the regular file review lists, and that therefore they were treated separately from other files under review, on a need-to-know basis. When giving the files to Mr. Pethick, Mr. Begalki did not suggest any specific criteria which might be considered. Mr. Begalki says that he did not take into

consideration whether the contents of the Checkmate files fell within the limits of the 1975 Security Service mandate, or the possibility of a forthcoming Commission of Inquiry. Mr. Begalki says that the possible embarrassment to the Security Service in the event of the disclosure of any of the contents of the Checkmate files did not "separately" have a bearing on his decision that the files should be destroyed. He later explained that that was not his reason, and that he did not know the contents of any of the files or that there were any illegalities described in them. He maintains that the lack of intelligence value was the criterion he applied in authorizing this destruction of the files, and which he expected Staff Sergeant Pethick to apply as he went through the files.

(iii) Evidence of Staff Sergeant Pethick

14. Mr. Pethick says that he conducted his review of the S.O.G. files in April 1977. He was assisted in this task by Mr. Hirst who took approximately half of the total number of files. The entire review of nearly 40 files involved two or three days work. Many of the files which Mr. Pethick received were empty except for an opening chit or some extracts. There were no summaries on the files nor did Mr. Begalki request that any summary be made. As a result, Mr. Pethick had no recollection of any of the details concerning the actual Checkmate operations. At most, he says that he only vaguely remembers reviewing a file on an individual. Mr. Pethick says that he retained only three documents: (1) an outline of the finances of either the Communist Party of Canada or a communist front organization, (2) a description of an individual's departure from a suspected communist front organization and (3) a document from an agency outside the Security Service. He says that Mr. Hirst did not recommend the retention of any documents. After completing this review, Mr. Pethick took all the files and the attached file review forms to Staff Sergeant Thomson at "F" Operations. No lists were made of the files, whether of those that were retained or of those that were destroyed. Mr. Pethick did not give any instructions to Mr. Thomson and merely assumed that the files were thereafter destroyed by him.

15. According to Mr. Pethick, Mr. Begalki's sole reason for carrying out this review was to weed out the superfluity of S.O.G. documents arising from the considerable accumulation of files that developed during the period when the S.O.G. was responsible for security at the Olympics. He says that Mr. Begalki never mentioned potential sensitivity of some of the file contents, or suggested the use of any particular criterion, but left the review of the files to the discretion of both Mr. Pethick and Mr. Hirst. Although the Checkmate files had been assigned the "F" Operations category number 938, Mr. Pethick relied almost entirely on the general criteria set out in the "I" Directorate Manual. He saw nothing of operational interest in the files worthy of retention. In conducting his review, Mr. Pethick says that he was never aware of the possibility of a forthcoming moratorium on the destruction of documents or of the establishment of a Commission of Inquiry. Moreover, he says that Mr. Begalki never directed him to consider whether the documents within the Checkmate files fell under the 1975 Security Service mandate. At the beginning of this review, Mr. Pethick learned from Mr. Hirst that a prior review of these files had been carried out. However, Mr. Pethick says that Mr. Hirst did

not elaborate to him on any of the details with respect to that previous assessment.

(iv) Evidence of Superintendent Gavin

16. About the same time that Mr. Begalki asked Mr. Pethick to carry out a review in "D" Operations of the Checkmate files, he also asked Superintendent Gavin, Officer in Charge of "F" Operations (Records Management) to carry out a subsequent review. Mr. Gavin then designated Mr. Thomson to conduct the actual "F" Operations assessment, which took place some time between May 10 and May 22, 1977. Mr. Thomson, who was given full authority to conduct the review, destroyed the files in their entirety on June 10, 1977. No attempt was made to summarize the files beforehand.

17. Mr. Gavin says that he assumed that Mr. Thomson would rely on the normal destruction criteria provided in the "I" Directorate Manual and on his own personal experience. Mr. Thomson says that the possibility of a forthcoming moratorium on the destruction of files was not a factor in Mr. Gavin's thinking. Mr. Gavin says that he had heard rumours about the possibility of the establishment of some kind of an inquiry, though not about this Commission, but that those rumours in no way influenced his instructions with respect to destruction. The Checkmate files were apparently permanently recorded in "F" Operations under the category number 938 but had been physically maintained in "D" Operations on a need-to-know basis. Until 1971, the category number 938 denoted that the files were to be kept for an indefinite period. With the amendment of the retention schedules in 1971, the policy thereafter relating to the destruction of 938 files was as follows: "Policy relating to the destruction of these files can be found on file". We do not know exactly what that means but at the very least it means that the regular destruction criteria of "F" Operations were not applicable to files in that category. The 938 category referred to confidential human sources files. According to Mr. Gavin, the Checkmate files might have been more properly classified as either organizational or operational files. Prior to the creation of the Operational Priorities Review Committee, such files were always kept for an indefinite period. This meant that each file was to be assessed on its own contents and merits, although the general criteria in the "I" Directorate Manual were usually applied. The organizational and operational files were normally reviewed first by the individual branch using operational criteria and then were sent to "F" Operations where the more established criteria were applied.

18. Mr. Gavin says that he was never aware of any review of the Checkmate files prior to that carried out in May and June 1977.

(v) Evidence of Staff Sergeant Thomson

19. In early May 1977 Mr. Thomson took charge of the Checkmate files which were handed to him personally by Mr. Pethick. Mr. Pethick had also sent over the file assessment forms attached to each file which merely indicated which files had been destroyed and the basis for this. Mr. Thomson has no recollection of any summary being sent over with the files. Mr. Thomson was

not given any list of the contents of the files or of the documents which had been removed. Moreover, the transit slip forms on each of the files from "D" Operations did not indicate which documents had been extracted before being sent to "F" Operations. In view of the fact that there was scant material left on the files, he made an assessment that there was nothing of value left to retain and endorsed Mr. Pethick's recommendation for destruction. He destroyed the files himself on June 10, 1977.

20. Mr. Thomson says that when Mr. Gavin designated him to carry out the final stages of the review process, Mr. Gavin merely indicated that Mr. Begalki was phasing out a special unit and no longer considered the S.O.G. files to be of any further operational value. Mr. Gavin did not suggest to him that he use any specific criteria; the matter being left entirely to his discretion and judgment. Nor did Mr. Pethick discuss with Mr. Thomson the destruction criteria which Mr. Pethick had employed. Since Mr. Thomson felt that the 938 category which had been assigned to the S.O.G. files was not really applicable, he relied in his review on three very general criteria: (1) operational value, (2) record value (i.e. for the records branch) and (3) historical significance. Mr. Thomson stated that there was no discussion about a possible forthcoming Commission at that time. Nor was he concerned with whether the files fell within the 1975 mandate because the mandate was not relevant to the process of file review. Mr. Thomson says that he saw nothing unusual in this destruction procedure.

21. Mr. Thomson says that he knew nothing of any prior review of these files in 1974 or 1975. He told us that he had never heard of any instance where two complete reviews of files had taken place. In such a case, he believed that it would be necessary to make some official notation to that effect or at least to prepare summaries of the contents of the destroyed files.

Conclusions and recommendations

22. In our opinion the explanation given by Mr. Yaworski for recommending in 1974 the destruction of the Checkmate files, when analyzed, amounts to nothing less than an intention to reduce the possibility of the Government of Canada learning of acts which he himself had come to consider to have been "wrong". Standard criteria for the destruction of files were deliberately disregarded by him and by Mr. Draper. We cannot ignore the fact that more than three years earlier, on June 30, 1971, in a memorandum prepared by Mr. Yaworski (although signed by Sergeant Pethick), it was said that "containment measures being considered or attempted" might be "of such a sensitive nature that they are not to be committed to paper". Mr. Yaworski told us that by "sensitive" he did not mean "illegal" but rather the fact that the Security Service was using information from a source which might put the source in jeopardy, and to the fact that the Security Service was itself taking action rather than simply reporting its information to some other branch of government. We find this explanation unconvincing and we believe that Mr. Yaworski, drafting the memorandum for Sergeant Pethick's signature, was referring to a willingness to use deterrent methods, including illegal ones if necessary, to achieve what he described in the memorandum as a "more aggressive and

positive approach" to operations which would "impede, deter or undermine" target groups.

23. The essential facts relating to the destruction of the files were adequately established by the witnesses whom we called and we therefore did not consider it necessary to call Mr. Draper to testify on this subject. In earlier testimony with respect to the operations themselves, he co-operated with us in the process of reviving the history as best he could (of which we are satisfied).

24. For the reasons given, we consider that the conduct of Mr. Yaworski and Mr. Draper was unacceptable.

25. Turning to the review that was carried out in 1977, we were initially very concerned that the reasons for that review may also have been questionable, but after our intensive hearings on the subject we are not prepared to find that there was any improper motive for what was done in that year.

CHAPTER 4

REPORTING OPERATION BRICOLE AND CERTAIN OTHER ACTIVITIES "NOT AUTHORIZED OR PROVIDED FOR BY LAW" TO MINISTERS AND SENIOR OFFICIALS

Introduction

1. In Part VI, Chapter 9, we shall report in detail on "Operation Bricole" ("Bricole", in English, means "Handyman"), which resulted, on the night of October 6-7, 1972, in the entry of members of the Security Service of the R.C.M.P. and two other police forces into premises occupied by the Agence de Presse Libre du Québec (A.P.L.Q.) and two other organizations in Montreal, and the removal by them from those premises of many of the records of the organizations, the examination of those records, and the ultimate destruction of the records. As we explained in the General Introduction to this Report, it is this conduct which, when revealed publicly by a former member of the R.C.M.P. at a trial arising from another matter in March 1976, ultimately produced circumstances which in July 1977 led to our appointment to conduct this Inquiry.

2. In this chapter and the next, which cover a period of five years, we shall examine whether the fact of Operation Bricole was disclosed to the Solicitor General and the extent to which, after its public disclosure in March 1976, there was full and frank disclosure by the R.C.M.P. to the Solicitor General, and to the Government of Canada generally, of illegal practices that were carried on in the R.C.M.P. Although the theme of deceit comes to the surface in other chapters of this Report, and particularly those in this Part and in certain chapters of Part III, it is in this chapter in particular that we find illustrations of what we described in Part III, Chapter 1, of our Second Report, in the passage which we quoted in the Introduction to this Part. The issue in this chapter is whether, at the several stages of the chronology, deceit was practiced toward the government. We shall see that the "need to know" principle makes it sometimes difficult to assign blame to a particular member, and that considerable ingenuity was exercised to avoid recognizing that the A.P.L.Q. incident was not "isolated" as an illegal act. In the following chapter we shall examine whether, when it appeared that former members of the Force might reveal illegal activities to the Solicitor General, efforts were made to try to prevent that from occurring at the very moment when the Solicitor General

was planning to assure the House of Commons that the A.P.L.Q. incident was "isolated" and that the practices of the Force conformed to the law.

3. This chapter encompasses a great deal of evidence taken throughout our Inquiry. The evidence of a large number of the witnesses who appeared before us was relevant in some respects to the matters dealt with. Those whose testimony touched most directly on the issues in question were the Honourable Jean-Pierre Goyer, the Honourable Warren Allmand, the Honourable Francis Fox, the Honourable Bud Cullen, Mr. Jérôme Choquette, Mr. Roger Tassé, Commissioner W.L. Higgitt, Commissioner M.J. Nadon, Commissioner R.H. Simmonds, Mr. J. Starnes, Mr. M.R.J. Dare, Assistant Commissioner M.S. Sexsmith, Chief Supt. Henri Robichaud, Mrs. Rita Baker, former S/Sgt. D. McCleery, former S/Sgt. Gilles Brunet, former S/Sgt. Gilbert Albert and Mr. J.R. Cameron. Their relevant public testimony is found in Volumes 19, 64, 81, 84, 87, 88, 90, 91, 114-117, 122, 123, 125-129, 136, 137, 139, 154-156, 160, 161, 168, 169, 189-191. The *in camera* testimony is found in Volumes C50, C58, C81-83, C87 and C89. In addition we received representations in response to notices given pursuant to section 13 of the Inquiries Act (Vol. C122).

A. REPORTING 'OPERATION BRICOLE' TO MINISTERS PRIOR TO PUBLIC DISCLOSURE BY ROBERT SAMSON IN MARCH 1976

Summary of facts

4. Operation Bricole took place early on the morning of October 7, 1972. The Director General of the Security Service, Mr. Starnes, was absent from Ottawa, and was only advised by telex about the operation on his return from Montreal on October 10. Commissioner Higgitt, who was absent from Ottawa for approximately one week following October 8 or 9, testified that he does not recall being made aware of the operation before his departure and was told about it on his return by Mr. Starnes.

5. During Commissioner Higgitt's absence, the Acting Commissioner was Deputy Commissioner Nadon. On October 11, Mr. Nadon received a letter from Mr. J.R. Cameron, the Departmental Assistant of the Solicitor General, Mr. Goyer, enclosing copies of a letter dated October 9, 1972, addressed to the Solicitor General from the Agence de Presse Libre du Québec (A.P.L.Q.), the Mouvement pour la Défense des Prisonniers Politiques Québécois (M.D.P.P.Q.) and the Coopérative des déménagements du 1er mai (1er mai). These organizations described a theft of documents from their offices on the night of October 6 and 7, and advised Mr. Goyer that a telegram (a copy of which was attached to the letter) had been sent to the R.C.M.P., the Quebec Police Force (Q.P.F.), and the Montreal City Police (M.C.P.). In the letter they said:

> At this time, everything points to this being an act carried out by police forces; . . .
>
> [our translation]

In referring to the telegram to the three police forces they said:

> In this telegram we asked them whether their respective organization was responsible for this act.
>
> [our translation]

They concluded the letter as follows:

> In your capacity as Solicitor General, we ask you to intervene as quickly as possible so that our question will receive a clear and accurate reply. We await a reply between now and October 13 at 11 o'clock.
>
> [our translation]

6. Mr. Nadon told us that he has no recollection of receiving the letter from Mr. Cameron. By reconstruction from the documents, he assumes that he referred Mr. Cameron's letter and the enclosures to the Director of Criminal Investigations on October 11. He noted on the letter on October 11 "check this out with Sec. Serv. and 'C' Division and see if we can come up with some answer". He told us that he infers that the Director of Criminal Investigations must have called him back and told him that there was nothing on the criminal operations side of the house and that it was probably then that he wrote on the letter "Best answer may be we are unaware". Mr. Nadon says that he heard nothing further about the operation until 1976.

7. Assistant Commissioner Parent, the Deputy Director General of the Security Service, responded to Mr. Cameron's letter of October 11, 1972, by a letter dated October 26, 1972, addressed to Mr. Cameron. This letter was signed on Mr. Parent's behalf by Sub-Inspector Yelle, who was the assistant head of "G" Branch at R.C.M.P. Headquarters. Mr. Parent's letter acknowledged receipt of Mr. Cameron's letter and said "We recommend that no acknowledgment of the A.P.L.Q.-M.D.P.P.Q. letter be made". Mr. Starnes was in Europe from October 17 or 18 to October 29 or 30 and told us that he did not participate in the decision to recommend that no acknowledgment be made of the letter. He said that before his departure for Europe no thought had been given as to what kind of answer should be sent. Commissioner Higgitt testified that he does not recall whether he was made aware of the advice given in the letter.

8. On October 12, 1972, the Attorney General of Quebec, the Honourable Jérôme Choquette, sent a telegram to the A.P.L.Q. advising that the R.C.M.P., the Q.P.F. and the M.C.P. were not involved in the matter and that the M.C.P. was conducting an investigation. He sent that telegram without consulting either the R.C.M.P. or the Solicitor General of Canada. Mr. Goyer testified that, upon reading about it in the newspapers, he did not find Mr. Choquette's assurance on behalf of the R.C.M.P. strange, first, because there were joint police operations, and second because there were channels of communication among the three police forces, and, since Mr. Choquette was Attorney General of the province, it was normal that he should be the spokesman.

9. Mr. Goyer was absent from Ottawa when the letter from the A.P.L.Q., M.D.P.P.Q. and 1er mai arrived. He testified that when he was told about the letter by his office staff he was advised that it had been sent on to the R.C.M.P. He said that he was told, on October 26 or shortly thereafter, that a

letter had been received from Mr. Parent recommending that there be no reply to the A.P.L.Q. letter. Mr. Goyer explained that he knew that the A.P.L.Q. was a target of the Security Service, suspected of subversive activities; consequently they did not attract his sympathy, and on the contrary, he did not wish to have any dealings with them. He told us he was not surprised when the R.C.M.P. recommended that he not reply and thought that the recommendation was perfect ("c'est parfait"). It should be borne in mind that we have come across no evidence that by October 1972 there had been any event that should have caused Mr. Goyer to be concerned as to whether the R.C.M.P. would lack candour in their dealings with him.

10. According to Commissioner Higgitt's notes, Mr. Goyer met with Mr. Higgitt and Mr. Starnes on November 3 and November 6, 1972. Mr. Tassé, the Deputy Solicitor General, was also present at both meetings. Prior to those meetings both Mr. Starnes and Commissioner Higgitt were aware that the R.C.M.P. Security Service had participated in the break-in and removal of documents from the A.P.L.Q., M.D.P.P.Q., 1er mai premises. Commissioner Higgitt and Mr. Starnes were both also aware, at that time, of the reply given by Mr. Choquette to the A.P.L.Q., M.D.P.P.Q. and 1er mai. Mr. Goyer testified that at that meeting he had before him the letter from Mr. Parent to Mr. Cameron and it was discussed briefly. He said that either Commissioner Higgitt or Mr. Starnes told him that the M.C.P. was investigating the matter, and if there was anything to it it was up to the Attorney General to carry out his duty and that is why the R.C.M.P. considered that no reply should be made. Mr. Goyer also testified that he was not told by the R.C.M.P. that they had been involved in the operation, that Mr. Parent's advice not to reply to the A.P.L.Q. meant to him that the facts in the A.P.L.Q. letter were completely false, that he did not ask whether there had been a theft, and, that he first became aware of the R.C.M.P. involvement in Operation Bricole from the newspapers in about March 1976.

11. Mr. Tassé testified that he recalls a meeting with Mr. Goyer, Commissioner Higgitt and Mr. Starnes in the few days following the election at the end of October 1972 but that he does not recall any discussion about the recommendation of Mr. Parent that there be no acknowledgment of the A.P.L.Q., M.D.P.P.Q., 1er mai letter. He said that on March 16, 1976, he was advised by Mr. Dare about the details of Operation Bricole and R.C.M.P. participation in it, and if what he learnt then had been said in his presence in 1972 he would certainly have remembered.

12. Commissioner Higgitt told us that he does not recall any definite time when he had a specific conversation with Mr. Goyer about Operation Bricole. Nevertheless, he stated that it is "inconceivable" to him that he would not have had such a discussion and that the weight of logic tells him that he discussed Operation Bricole with Mr. Goyer. Yet Mr. Higgitt's notes from his meetings with Mr. Goyer on November 3 and November 6 do not mention the Operation. He also told us that if Mr. Goyer had asked him about the operation he would not have lied.

13. Mr. Starnes' evidence was:

> . . . I have no recollection, in fact, of talking to the Minister about this subject. I must have. You know, logic leads me to believe that I did, . . .

In response to a hypothetical question as to what his reply would have been if Mr. Goyer had asked him whether the R.C.M.P. were involved in the operation, Mr. Starnes testified that he would have said yes. Mr. Dare testified that in a conversation with Mr. Starnes, on or about March 31, 1976, Mr. Starnes told him that he, Mr. Starnes, had *not* informed Mr. Goyer about Operation Bricole because it would have placed Mr. Goyer in an untenable position. Mr. Dare gave this information to Mr. Allmand, who had succeeded Mr. Goyer as Solicitor General, by letter dated April 1, 1976. Mr. Starnes told us that Mr. Dare's recollection of that conversation is accurate but that he thinks that he, Starnes, had confused in his own mind at that time the decision the R.C.M.P. had taken about not reporting Operation Ham to the Minister with what they had reported to the Minister on Operation Bricole.

14. Over a year later, on May 27, 1977, a meeting was held, attended by Mr. Fox (who had succeeded Mr. Allmand), Mr. Claude Morin (Mr. Fox's Executive Assistant), Mr. Goyer, Commissioner Higgitt, Mr. Starnes, Mr. Tassé, Commissioner Nadon and Deputy Commissioner Simmonds. At that meeting, according to notes of the meeting prepared by Mr. Tassé, Mr. Starnes left the impression, through nodding his head, that Mr. Goyer had been advised in 1972 about R.C.M.P. participation in Operation Bricole. Mr. Tassé testified that after the meeting he asked Mr. Dare who had told him that Mr. Starnes did not place the full facts before Mr. Goyer in 1972, and that Mr. Dare told him that it was Mr. Starnes himself. Mr. Tassé told us that he then asked Mr. Dare to speak to Mr. Starnes again, to find out whether the information provided to Mr. Allmand was in accordance with the conversation that Mr. Dare and Mr. Starnes had in 1976. Mr. Tassé stated that Mr. Dare reported back to him that he had spoken to Mr. Starnes again and that Mr. Starnes agreed that what was said in the letter to Mr. Allmand accurately represented what he, Mr. Starnes, had said in the 1976 conversation, but that in 1977 he had a different memory about the matter and that he believed it possible that he, Starnes, had mentioned to Mr. Goyer the participation of the R.C.M.P. in Operation Bricole.

15. Mr. Allmand succeeded Mr. Goyer as Solicitor General on November 27, 1972. He testified that he did not learn about Operation Bricole in any way until it was revealed by former Constable Robert Samson at the latter's trial in March 1976.

16. Mr. Dare succeeded Mr. Starnes as Director General on May 1, 1973. Mr. Nadon succeeded Mr. Higgitt as Commissioner on January 1, 1974. On August 19, 1974, the Security Service prepared a "Damage Report" with respect to Constable Samson, who had been arrested in connection with a bombing in Montreal. The Damage Report was a summary and analysis of the extent to which Constable Samson was aware of various activities and operations of the Security Service.

17. Mr. Dare became aware of Operation Bricole in August 1974 when that Damage Report was submitted to him by the Deputy Director General (Operations), Assistant Commissioner Howard Draper. Mr. Dare submitted the Damage Report to Commissioner Nadon, accompanied by a memorandum dated August 20, 1974. The Damage Report simply stated, in referring to Operation Bricole, that it "was a PUMA operation at the A.P.L.Q., that took place without the knowledge or permission of Headquarters". It did not provide any details about the break-in and removal of documents. It further stated: "All original documents were destroyed . . .". Mr. Dare's memorandum to Commissioner Nadon elaborated slightly on the operation:

> The "G" Ops. PUMA operation is a delicate one since this Headquarters had no knowledge or authorization which involved our co-operation with the MCP. In this case Cst. Samson was deeply involved. It is reported that all documents were destroyed. There remains, however, the fact that our member was deeply involved with the MCP and should he choose to cause an exposé it would seem that the Force would be open to charges of poor supervision in the delicate security field. Some negotiation and review with the MCP should be undertaken to determine what scenarios, if any, should be planned.

18. Commissioner Nadon testified that although he recalls being briefed on the Damage Report, he does not recall discussing any of the details of Operation Bricole in 1974 and that he did not read the Damage Report at that time, although he may have skimmed through Mr. Dare's memorandum. He said that if he had known the details of the operation in 1974 he would have ordered an investigation. He said that he did not relate this item in Mr. Dare's memorandum to the incident mentioned in the 1972 letter from the A.P.L.Q., which he had handled at the time as Acting Commissioner.

19. Mr. Dare testified that he came to the conclusion in 1974 that Operation Bricole had been legal and that he came to that conclusion without seeking any legal advice. From his memorandum to Commissioner Nadon it is clear that he was aware of the difficult position the Force would be in if the operation were exposed, because "charges of poor supervision" might be levelled against the Force. When he became aware of Operation Bricole, he did not inform the Solicitor General, Mr. Allmand, about it because he was satisfied that Mr. Starnes had dealt with the matter "in his own way, period", not because he then considered it was not illegal. He "didn't think it was [his] responsibility to review a clear decision that had been made by [his] predecessor", although he did not agree with Mr. Starnes' "decision not to advise the Solicitor General of that matter".

Conclusions

20. On the evidence before us, we conclude that before March 16, 1976, no member of the R.C.M.P. reported to anyone in the government, either at the ministerial or at the official level, about the R.C.M.P. participation in Operation Bricole and the subsequent examination and destruction of the documents which had been removed during the operation. Mr. Goyer and Mr. Tassé say that they do not recall being advised about R.C.M.P. participation in the

operation when the recommendation of the R.C.M.P. not to reply to the letter from the A.P.L.Q., M.D.P.P.Q., and 1er mai was being discussed with Commissioner Higgitt and Mr. Starnes on either November 3 or November 6, 1972. They would surely recollect such a significant matter if they had been given such information. Neither Mr. Higgitt nor Mr. Starnes remembers specifically having advised Mr. Goyer about R.C.M.P. participation. They simply rely on their "logic" which leads them to the conclusion that they must have told Mr. Goyer. To refute that "logic" there is not only the recollection of Mr. Goyer and Mr. Tassé, but there is also Mr. Starnes' statement to Mr. Dare in March 1976 that he had not informed Mr. Goyer about R.C.M.P. participation, and there are Commissioner Higgitt's notes of the November 3 and November 6, 1972 meetings, which make no mention of the operation.

21. Mr. Goyer testified that the advice not to reply to the A.P.L.Q., M.D.P.P.Q., and 1er mai letter, constituted for him a representation by the R.C.M.P. that the facts in the A.P.L.Q. letter were false. He admits that he was not sympathetic to the A.P.L.Q. and says he thought that the recommendation not to reply to the letter was perfect ("C'est parfait"). Clearly, with such a frame of mind he would have had no inclination to enquire further of the R.C.M.P. about the matter. We note that Mr. Goyer adopted this attitude in spite of the seriousness of the allegation and the fact that the advice given to him did not mention whether or not the R.C.M.P. were involved. Mr. Starnes desired not to place the Minister in what he called an "untenable position". His ability to accomplish that was, in effect, (if unintentionally) made possible by the attitude of Mr. Goyer, who apparently had no desire to pursue the matter.

22. Nevertheless, we find the conduct of some of the members of the R.C.M.P. totally unacceptable. In 1972 Mr. Starnes and Commissioner Higgitt withheld relevant information from Mr. Goyer. It was incumbent upon them to provide him with all the facts relating to Operation Bricole as soon as they became aware of them. That would have been so even without the letter from the A.P.L.Q., M.D.P.P.Q., and 1er mai. But once the matter was raised in that letter, they compounded their wrong by allowing the Minister to be deceived into believing that there was no involvement of the R.C.M.P. They chose to cover up an illegal operation. This was misguided and wrong.

23. We do not agree with Mr. Dare's interpretation of his responsibilities in this matter, and we feel that his conduct was improper in the circumstances. He was clearly aware of the seriousness of the matter, as evidenced by the August 19, 1974, Damage Report and his accompanying memorandum to Mr. Nadon. It is not acceptable for any senior government employee to refrain from raising a matter with a responsible Minister merely because his predecessor chose to handle it in a certain fashion. To accept Mr. Dare's reasoning would be tantamount to saying that no wrongdoing which is discovered by an incumbent should be revealed by him because his predecessor chose to cover it up. At the very least, Mr. Dare should have urged upon Commissioner Nadon that the matter be brought to the attention of Mr. Allmand immediately. We believe that in the light of the reporting relationships that then existed it would have been appropriate for Mr. Dare to raise the matter directly with Mr. Allmand after first advising Commissioner Nadon of his intention to do so.

24. We accept Mr. Nadon's evidence that his note on the Cameron letter — "Best answer may be we are unaware" — may have been made by him after consultation with the Criminal Operations side of the Force and prior to the letter being referred to the Security Service. The note, however, does not make that clear. Nevertheless, such a note from Mr. Nadon, who was then the Acting Commissioner, may well have governed the decisions of those subsequently involved in making the recommendation to the Minister. Unfortunately, Mr. Parent's health prevented him from testifying before us, so we do not know to what extent he was knowledgeable about the recommendation in the memorandum which went out over his name to Mr. Cameron.

25. We also accept Commissioner Nadon's testimony that when Operation Bricole came up in the Samson Damage Report he did not relate it to the letter from the A.P.L.Q., M.D.P.P.Q., and 1er mai letter in 1972. We find this position to be consistent with his total lack of knowledge and experience with regard to the Security Service prior to his appointment as Commissioner on January 1, 1974. He pointed out that the Samson Damage Report does not refer to any illegalities or irregularities with respect to Operation Bricole. It is therefore difficult to see how he would have been alerted to the necessity of bringing the matter to the attention of the Minister, in the absence of some further briefing to that effect by Mr. Dare. Indeed, he said that he has no recollection of ever having seen the Damage Report, itself, and we have no reason to question that. He said that, had he known the details of the operation in 1974 or even had he seen the Damage Report, he would have called for an investigation.

B. REPORTING OPERATION BRICOLE AFTER PUBLIC DISCLOSURE

(i) *The history from March 1976 to May 1977*

26. According to an R.C.M.P. internal memorandum, on August 15, 1974, during the course of the police investigation into a bombing in which he was involved, Constable Samson "hinted" to two members of the R.C.M.P. "that if his mother and his friends did not obtain better treatment from the Montreal City Police Investigators, he would hold the Force responsible and would bring the Force and all those in it tumbling down". As a consequence, the Damage Report of August 19, 1974, was prepared. In March 1976, during a *voir dire* at his trial arising out of the bombing incident, former Constable Samson mentioned Operation Bricole, and senior officers of the R.C.M.P. then realized that sooner or later the matter would become public knowledge. A comprehensive report was prepared, dated March 15, 1976, and submitted to Mr. Dare. On March 16, 1976, Mr. Dare met with Messrs. Tassé and Bourne and gave them a copy of that report. Mr. Tassé immediately phoned the Deputy Attorney General of Quebec to ask him if he was aware of the matter, and the latter confirmed that he was. On the same day Mr. Tassé advised the Assistant Deputy Attorney General of Canada of his conversation with the Deputy Attorney General of Quebec. Immediately following that meeting, R.C.M.P.

representatives met with Mr. Allmand and informed him about Operation Bricole.

27. Mr. Tassé testified that on March 17 he told Mr. P.M. Pitfield, the Clerk of the Privy Council, about Operation Bricole. On the afternoon of the same day he and Mr. Pitfield met with Prime Minister Trudeau to inform him. Mr. Tassé told us that he attended three subsequent meetings with the Prime Minister during March and April 1976, at which Messrs. Allmand, Nadon, and Dare were present and at one of which the Honourable Ron Basford (the Minister of Justice), Mr. D.S. Thorson (the Deputy Minister of Justice) and Mr. Pitfield were present. On April 7, 1976, a copy of the R.C.M.P. report on Operation Bricole was delivered to Mr. Allmand under cover of a memorandum from Mr. Dare. Mr. Tassé testified that in the weeks following March 16, assurances were given on at least two occasions by Commissioner Nadon and Mr. Dare, in the presence of the Prime Minister and Mr. Allmand, that Operation Bricole was an activity which was exceptional and isolated. Mr. Tassé explained that he understood from those assurances that the activities of the R.C.M.P. were conducted within the constraints imposed by the law, that Operation Bricole was a kind of an aberration which must be treated as such, and that as far as all of the other activities were concerned everything was under control. He told us that he understood that Messrs. Nadon and Dare were in a position to assure the government that the R.C.M.P. operated legally and that there were not any situations where illegal operations were institutionalized. He said he understood that that did not mean to say that there would not be cases where policemen, through overzealousness, lack of judgment or dishonesty, might carry out criminal or illegal acts. According to Mr. Tassé, Messrs. Dare and Nadon entered one reservation, which was that before the Protection of Privacy Act came into effect in 1974 there were intrusions made for the purpose of carrying out electronic eavesdropping. Mr. Tassé added that those to whom this reservation was expressed were already aware of such intrusions.

28. On April 23, 1976, Commissioner Nadon wrote to Mr. Allmand, enclosing a 'Proposed Statement for Use by the Minister'. In the letter he said:

> On the advice of the present Director General of the Security Service, I am prepared to assure you, without equivocation, that there is no precedent for a search and seizure operation by the Security Service in Montreal, acting alone or in concert with other Police Forces, and there has been no repetition.

He concluded the letter by saying:

> My assurance that there has been no previous case of its kind and that such action has not been repeated by the Security Service in Montreal, will, I trust, assist you in disposing of this isolated incident to the satisfaction of the Government and the House.

In the draft proposed statement the following sentence is found:

> This is the only incident wherein the R.C.M.P. Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation, alone or in concert with members of other police agencies.

Commissioner Nadon testified that, as far as he was concerned, the assurances given by him in the letter applied to all of Canada, not just to Montreal, and also that it applied to the criminal investigation side of the Force as well as to the Security Service. Mr. Dare told us that he participated in the drafting of that letter and that he agrees with it. Mr. Dare said that he supposes he has to make an exception with respect to paragraph 5 which reads ". . . the operation was clearly contrary to the rule of law, the very basis on which this Force is founded", because he did not consider Operation Bricole to be illegal. Commissioner Nadon said that the letter of April 23, 1976, to Mr. Allmand, had been prepared by Mr. Dare and that he read it over with Mr. Dare before signing it.

29. Mr. Tassé testified that, because of the assurances given in 1976 that Operation Bricole was an activity that was exceptional and isolated, it was decided in that year not to create a commission of inquiry. Mr. Allmand told us that at that time consideration was given to setting up a commission to investigate, but that after discussions with the Government of Quebec it was agreed to permit the Government of Quebec to investigate the matter as an alleged offence.

30. On May 18, 1976, in response to a question, Mr. Allmand advised the House of Commons that he had met with the Solicitor General of Quebec who had ". . . asked if he could not deal directly with the R.C.M.P. to determine whether something illegal had taken place and whether further action should be taken". Mr. Allmand said that he had ". . . asked the R.C.M.P. to co-operate fully with the Law Enforcement Officers and the Minister in Quebec", and that the Solicitor General of Quebec would ". . . be taking action following the completion of his investigation".

31. On August 16, 1976, Commissioner Nadon sent a memorandum to Mr. Dare, advising that he had reviewed the "Bricole" file and noted that the investigation in the case was far from complete. By memorandum dated August 25, 1976, Mr. Dare replied to Commissioner Nadon, advising that they had ". . . agreed to let the Quebec authorities pursue their investigation into a matter which is within its prime jurisdiction, the Criminal Code". In the memorandum Mr. Dare said that in his judgment this would leave Commissioner Nadon completely free to take whatever action he deemed appropriate after the Province of Quebec had made known its decisions. He added that ". . . to cover much the same ground by way of an internal investigation could be misinterpreted by those same Quebec authorities, perhaps especially the matter of interviewing of necessity members of other police forces". Commissioner Nadon was satisfied with Mr. Dare's reasoning and did not pursue the matter further.

32. On September 14, 1976, Mr. Fox was named Solicitor General. He testified that he had heard about the A.P.L.Q. incident in the House of Commons before he became Solicitor General and that after he became Solicitor General it was mentioned to him briefly, he thought in September 1976, at which time it was in the hands of the Attorney General of Quebec. In December 1976 Messrs. Nadon, Dare and Tassé attended a meeting with Mr. Fox at which Mr. Fox was completely briefed about Operation Bricole. Mr.

Tassé told us that at that briefing the assurances about R.C.M.P. activities given previously to Mr. Allmand were repeated to Mr. Fox. Mr. Fox testified that in December 1976 it was reported to him that there would be a *pré-enquête* in Montreal which would begin in January 1977. He said that at the beginning of January 1977 the Judge conducting the *pré-enquête* had requested the R.C.M.P. to produce certain documents. Mr. Fox examined the documents from the R.C.M.P. files which it was proposed to submit to the Judge. He told us that, before he looked at those documents, Mr. Tassé had given him documents to examine from the departmental file on Operation Bricole, and that he had been astonished by what he read.

33. On January 25, 1977, at a regular weekly meeting that Mr. Fox held with the R.C.M.P. the Operation Bricole question was discussed. Mr. Fox told us that at that meeting he indicated his astonishment at reading the documents and asked whether it was the usual practice to do things like that. According to Mr. Fox, he was told clearly that it was the only case to their knowledge of illegal activities, that it was an isolated case, that the matter had been examined a year earlier by Mr. Allmand and that Mr. Allmand had also been assured that it was an isolated case.

34. Mr. Fox told us that at the meeting of January 25, 1977, he expressed to Commissioner Nadon his disquiet at Mr. Starnes' reaction upon being made aware of the operation on October 10, 1972, i.e. Mr. Starnes believed that he, Starnes, should have been advised in advance of the operation but did not express concern about the operation itself as a matter of principle. According to Mr. Fox, he also expressed his disquiet at the general reaction of the R.C.M.P. in recommending to Mr. Goyer that he not reply to the letter from the three organizations, and at the fact that one month later, when a new Minister, Mr. Allmand, had entered the picture, the affair had not been brought to his attention.

35. Mr. Fox told us that while the January 25 meeting dealt specifically with Operation Bricole, general assurances were given that the only case of illegal activity to the knowledge of the R.C.M.P. members present was Operation Bricole. He testified that the assurances he received went far beyond those given in Commissioner Nadon's letter of April 23, 1976, to Mr. Allmand (see excerpts quoted earlier). According to Mr. Fox, his own question was more general, the assurances that he received were much more general, and those general assurances were that the only case of illegal activity was Operation Bricole.

36. Commissioner Nadon testified that at the January 25 meeting Mr. Fox asked him whether he had knowledge of illegalities, other than the A.P.L.Q. incident, and he assured Mr. Fox that from his, Nadon's, experience and knowledge he did not know of any others. He told us that in testifying before us he was just guessing as to what took place at the meeting when this matter was discussed. He said that Mr. Fox possibly asked him whether there were any similar circumstances and he probably looked around the table to see if any of the Deputies had anything to say and when they did not say anything, he assured Mr. Fox there were no others. Commissioner Nadon testified that Mr.

Fox probably asked him "Are there any other incidents like this or similar to this?" and that he assured Mr. Fox there were not. He explained that he did not necessarily mean another break-in of a news agency, but rather, "Any illegality — something that would be illegal. Search and seizure without warrant, et cetera, or whatever it was". He interpreted Mr. Fox's question as referring to any other matter that was illegal that might have been done by a member of the Force and he regarded the assurance he gave as a categorical assurance that nothing illegal, other than the A.P.L.Q. incident, had been done by any member of the Force. He said he was satisfied that that was so because the Deputy Commissioners at the meeting would have spoken up if they had thought that he was leading the Minister astray, or would at least have brought it to his, Nadon's, attention. He said he was confident that the Deputy Commissioners would have brought to his attention any knowledge they had of any other cases of illegality. He told us that the main concerns at the January 25 meeting were the A.P.L.Q. incident and the practices employed during that operation, and that Mr. Fox wanted some assurances that the R.C.M.P. had policies and instructions in place that prohibited members of the Force from carrying out any illegal act during such operations.

37. Following the meeting of January 25, 1977, Mr. Fox asked Mr. Tassé to prepare a letter for his signature, asking the R.C.M.P. for written assurances confirming what they had told him verbally. In that letter Mr. Fox pointed out that at the meeting Commissioner Nadon had assured him that the activities of the Security Service were carried out within the law and that members of the Security Service had received precise directions on the subject from the Director General in May 1975. He asked Commissioner Nadon to confirm that that was the case not only for the Security Service but for the R.C.M.P. as a whole in all its operations.

38. Mr. Fox testified that at the time he read the Operation Bricole documents he decided that he would raise the question again with the Prime Minister. He said that at the January 25 meeting he told Mr. Nadon of his intention to see the Prime Minister and that he no doubt asked Mr. Nadon to give him his recommendations. Mr. Fox stated that he thinks that is why Commissioner Nadon wrote to him so quickly after the meeting with proposals as to alternatives which could be followed. By letter dated January 27, received in Mr. Tassé's office January 31, 1977, Commissioner Nadon wrote to Mr. Fox outlining a number of options open to the Minister "to meet the demands for the release of Security Service information into the public domain".

39. Mr. Fox met with the Prime Minister on January 29, at which time, according to Mr. Fox, they discussed the possibility of creating a commission of inquiry to deal with Operation Bricole. Mr. Fox told us that they decided it would be preferable to await the unfolding of events before the courts in Montreal and then to consider the question in detail.

40. Mr. Fox testified that his chief concern was to satisfy himself that Operation Bricole was unique and not part of a system, that it was not something which was accepted by and acceptable to the R.C.M.P. and its senior management. He said that the other thing which preoccupied him,

which he had always taken for granted in relation to police forces, was that it was incumbent on the Commissioner or the Director General to bring to the attention of the Minister, in a clear and unequivocal fashion, all activity which might be illegal. He said he found it very surprising that Mr. Allmand had not been informed of Operation Bricole although Mr. Allmand had become Solicitor General only a few weeks after Headquarters had learned of the operation.

41. As a result of the *pré-enquête*, three police officers, one from each of the R.C.M.P., the Quebec Police Force and the Montreal Police, had been charged. When the trial of the three police officers took place in Montreal there was more publicity in the news media and there were questions in the House of Commons. For a considerable period of time the government had undertaken, through Mr. Allmand, to make as complete a statement as possible in the House of Commons on the matter. No such statement had been made by the time Mr. Allmand was transferred to another Ministry. Mr. Fox had promised to make a statement in the House of Commons as soon as judicial proceedings against the three policemen were finished. Guilty pleas were entered on May 26, and the court set June 9 as the date for representations on sentencing. In order to prepare the statement for Mr. Fox, a meeting took place on May 27, 1977, at which Messrs. Fox, Goyer, Tassé, Higgitt, Nadon, Simmonds, Starnes, Dare and Morin were present. This is the meeting we discussed earlier.

42. Mr. Tassé testified that the purpose of the meeting was to try to determine what was known about Operation Bricole and to organize the material in such a way that Mr. Fox could refer to it easily during an appearance which he had to make before the Parliamentary Committee considering his estimates. Mr. Tassé said the meeting was also the first step towards the preparation of the statement which Mr. Fox had to make in the House. Mr. Fox told us that the object of the meeting was to assist him to prepare the statement for the House and to relate all the facts concerning Operation Bricole, and particularly at what time the R.C.M.P. in Ottawa had become aware of the operation and when the R.C.M.P. had or had not told the Minister of the day about it. Commissioner Simmonds testified that the purpose of the meeting was to determine how much the Minister had been advised and not whether or not the incumbent Minister was going to issue a press release. According to Commissioner Simmonds, the real gist of the meeting was that this group of people got together to reconstruct events and to try to determine who had told what to whom. He said that he was (as Deputy Commissioner, which was then his rank) simply an observer because he did not know any of the circumstances at the time. Mr. Higgitt testified that his recollection is that something preliminary was being done at the meeting to prepare Mr. Fox to deliver a statement in the House of Commons.

43. Mr. Fox asked Mr. Tassé to take notes at the May 27 meeting and to prepare a draft statement following it. Mr. Tassé and Mr. Bourne prepared a draft dated May 31, 1977. Mr. Tassé sent the draft statement to Commissioner Nadon on the same day with a note saying that he hoped to have the Commissioner's and Mr. Dare's comments the following morning. Mr. Tassé

told us that he does not recall receiving a written reply from anyone but that he believes that he had conversations with Commissioner Nadon, though not with Mr. Dare, in which there were several minor suggestions, the nature of which he does not remember. He said that there were no major comments.

44. On June 9, the sentencing of the three policemen was deferred until June 16. Between the entry of the guilty pleas on May 26 and the sentencing on June 16, 1977, Chief Superintendent Cobb, the Security Service Area Commander in Quebec, who was the R.C.M.P. member who had been charged, was suspended. During that period Superintendent Henri Robichaud was the Acting Area Commander.

(ii) *Allegations of Messrs. McCleery and Brunet*

45. Sometime in May 1977 Messrs. Donald McCleery and Gilles Brunet asked Mr. Fox's office for an appointment with Mr. Fox so that they could review with him the circumstances of their dismissal from the Force in 1973. Mr. Fox decided that Mr. Tassé, rather than he, should meet with them. Mr. Robichaud testified that he had obtained information that "the Minister had invited Mr. McCleery to Ottawa to meet with him" and that on May 31, 1977, he discussed that information by telephone with Assistant Commissioner Sexsmith, the Deputy Director General (Operations). Mr. Robichaud told us that his interest in the matter was that there was a considerable amount of publicity at the time and he was wondering what other publicity would follow from the meeting. Mr. Robichaud testified that after talking to Mr. Sexsmith on the telephone, he spoke to Staff Sergeant Gilbert Albert, a member of the Security Service in Montreal, and asked Mr. Albert whether he, Albert, could meet with Mr. McCleery to see "what Mr. McCleery was up to those days".

46. Mr. Albert met Mr. McCleery at lunch on May 31, 1977. Afterward Mr. Albert went to Mr. Robichaud's office and gave him a verbal report. Mr. Robichaud then arranged a meeting with Mr. Sexsmith for that same evening, in Ottawa, to consider the matter. Mr. Robichaud met with Mr. Sexsmith and Superintendent Nowlan, and discussed with them what he had heard from Mr. Albert. While still in Ottawa, Mr. Robichaud dictated a memorandum to file setting out what Mr. Albert had told him. Mr. Robichaud testified that he did not recall "rereading" the memorandum and that he returned to Montreal without having received a copy of it, that the typist started typing it as soon as it was dictated and that he left before a copy was available. He said that the memorandum was to be given to Mr. Sexsmith and that he was told that the report would be sent to both Mr. Dare and Commissioner Nadon. He said the conclusion reached at the meeting on May 31, 1977, was that the Security Service was in difficulty because of the nature of the allegations.

47. After receiving Mr. Albert's report on May 31, Mr. Robichaud had sufficient information relating to an alleged kidnapping to be able to find a file number at R.C.M.P. Central Registry in Montreal relating to the case of one Chamard. (We discuss the case of Mr. Chamard in Part VI, Chapter 5.) He says he went to Central Registry, got the file out and saw the newspaper clipping about the press conference which Mr. Chamard had held in 1972, and

just took the file number down. Following his return to Montreal from Ottawa, late in the evening of May 31, 1977, Mr. Robichaud asked Mr. Albert to meet with Mr. McCleery again.

48. According to Mr. Robichaud, before the first meeting between Mr. Albert and Mr. McCleery, his "... concern was what Mr. McCleery was going to tell the Solicitor General", not because it was going to be told to the Solicitor General, but rather, "... what operations he was going to bring up or in what form ...". He told us that if he were successful in obtaining information through sending Mr. Albert to talk to Mr. McCleery his intention was to give it to Mr. Sexsmith and that he had no idea what Mr. Sexsmith would do with it. He said his concern on May 31, shared by Mr. Sexsmith, was that Mr. McCleery would make public the allegations that he was recounting to Mr. Albert, and disclose other operational matters in one way or another that would cause them concern. Mr. Robichaud acknowledged that from December 1973, when Mr. McCleery was discharged from the Force, until May 1977, Mr. McCleery had not disclosed any matters with respect to operations compromising to the R.C.M.P., nor had anything happened in that time to justify the fear that Mr. McCleery would leak information to the news media.

49. Mr. Robichaud testified that he thought that the Solicitor General was going to be informed of the facts about the various matters for the simple reason that he, Robichaud, had passed them on to his superior officer who had no choice but to pass them on further and to cause them to be looked into. He told us that it was his impression that the results of the investigation into what was raised in his memorandum, or something about the allegations, would be brought to the Solicitor General's attention.

50. Commissioner Nadon and Mr. Dare were made aware of the contents of Mr. Robichaud's memorandum on June 1, 1977. Mr. Sexsmith said that he saw the Robichaud memorandum on June 1 and that he discussed with Mr. Dare whether there should be an internal investigation. Mr. Sexsmith — who in June 1977 was the Deputy Director General (Operations) of the Security Service — testified that the Security Service was interested in knowing why Mr. McCleery wanted to see Mr. Fox because they (the Security Service) "... were concerned Mr. McCleery would reveal [their] Cathedral Operations... and other operations such as surreptitious entries". He acknowledged "... that the Force had meant never to let the Solicitor General... know of practices or operations that were not authorized or provided for by law". He said that "... the Security Service kept certain operational things from the Solicitor General". According to Mr. Sexsmith "... the Security Service was not going to volunteer information concerning improper activities" and did not want the Solicitor General "... to become aware of these practices" because if he were aware of them he would be put "... in an impossible position". As a Minister of the Crown he could not "... live with knowledge which indicated that an organization he was primarily responsible for was committing illegalities or improprieties or wrongdoings, or whatever you want to call them". However, Mr. Sexsmith asserted that no effort was made to prevent Mr. McCleery from doing what he was going to do.

51. Commissioner Nadon told us that after Mr. Dare came to see him on June 1, and informed him that he, Dare, had received information from his Montreal office that there had been other irregularities, he immediately appointed Superintendent Nowlan and Inspector Pothier to investigate and confirm or deny these irregularities and set out his actions in a memorandum, dated June 1, to Mr. Dare.

52. In his memorandum of May 31, Superintendent Robichaud wrote:

> When Albert questioned him [Mr. McCleery] as to what he meant by other incidents, he stated that he was referring to the dirty tricks department (DTD) that involved Inspector Hugo, Inspector Blier and Bernard Dubuc who, according to McCleery, would have been responsible for a kidnapping that was never identified as such but if it had been, they would have all gone to jail. In addition, there was an F.L.Q. hideout near Sherbrooke that burned and again he alleges that some of these members were involved. Thirdly, he mentioned that his own summer cottage in the Laurentians had been used by the Force to store dynamite.

He also wrote:

> However, that the counter-measures group was comprised of the 3 people he mentions as well as Cst. Rick Daigle who, if memory serves me right, was a close associate of Don McCleery's.

(On June 1, Mr. Albert met Mr. McCleery again. Our report as to that second meeting is found in Part V, Chapter 5, of this Report.)

Both Mr. Nadon and Mr. Dare saw the Robichaud memorandum. Mr. Simmonds testified that he never saw Mr. Nadon's memorandum to Mr. Dare but that he was aware, on June 2 or June 7, that Superintendent Nowlan had been appointed. Mr. Simmonds testified that shortly after the appointment of Mr. Nowlan, he, Simmonds, was generally aware of the nature of the allegations of burning of a building and some acquisition of dynamite under conditions that might amount to theft.

53. Mr. Sexsmith told us that it was a natural assumption on his part that Mr. Nadon would have informed Mr. Fox, Mr. Tassé or Mr. Bourne that he had appointed an investigating team to investigate certain allegations that had been made. He says that, had he been replacing the Director General in one of the meetings with the Minister, he probably would have seen this as an important development that should have been conveyed to Messrs. Fox, Bourne or Tassé.

54. On the afternoon of June 6, 1977, Messrs. Tassé and Landry met with Messrs. McCleery and Brunet. According to Mr. Tassé's evidence, the ex-members complained about having been unjustly treated by the Commissioner and said that because of an affidavit filed under section 41 of the Federal Court Act they had had to stop their lawsuit against the government and the Commissioner but that if one got to the bottom of things one would realize that they had been unjustly treated. Mr. Tassé told us that Mr. McCleery and Mr. Brunet stated that the A.P.L.Q. incident was not the first time that the Solicitor General had been badly informed and that there had been other more serious acts committed by members of the R.C.M.P. while

they were members. Mr. Tassé said that they would not give details as to times, persons and events and that what they said was very general. Mr. Tassé testified that one of the reasons they advanced for not giving details was the Official Secrets Act and that he and Mr. Landry told them that it was very doubtful whether the Official Secrets Act applied.

55. Mr. McCleery testified that the reason they went to meet with Mr. Tassé and Mr. Landry was to discuss their own dismissal, and not for any other reason. On the other hand, he also said in his testimony that their going to Ottawa had nothing to do with their discharge from the Force; it had "everything to do with lying and fabrication and innuendo". He reconciled these two statements by explaining that his purpose in wanting to see Mr. Fox was to tell him or senior representatives of his office that the Force was lying to him just as it had lied to Mr. McCleery with respect to his discharge. His evidence was that the purpose of the meetings on June 6 and June 23 was to obtain a hearing with respect to his discharge and that he cannot recall if they discussed the incidents in the first meeting or whether it all came out when Messrs. Landry and Handfield went to Montreal for the second meeting. At the meeting on June 6, according to Mr. McCleery, Mr. Brunet mentioned the burning of a cottage but there was no detailed explanation because he, McCleery, would not explain it. According to Mr. McCleery, Mr. Tassé was probably not told on June 6 that the mail was being opened, and that was probably mentioned at the second meeting. Yet, Mr. McCleery then testified that he "guessed" that the matter of mail opening would have had to be mentioned on the 6th, otherwise Mr. Landry and Mr. Handfield would not have come to see them for the second meeting. On further reflection, Mr. McCleery told us that he knew that the mail issue was mentioned on June 6 as an example.

56. Mr. Brunet testified that Mr. McCleery told him he had arranged a meeting with the Solicitor General's office to discuss the circumstances of their dismissal and Mr. McCleery asked him to accompany him for support. He told us that the purpose of the meeting was to explain the circumstances of their dismissal to the Solicitor General in an attempt to get a proper hearing. He testified that they decided, in order to attempt to influence the Solicitor General to believe their story or to grant them a hearing, to point out to him that statements had been made in recent weeks in the press concerning illegal acts by the R.C.M.P., and in particular, statements that the A.P.L.Q. case was an isolated case, which were not the truth. They agreed that they would not go into any specifics but that they would cite some general headings and suggest to the persons with whom they met that those persons conduct their own internal inquiries, and that, if they were not successful in uncovering the truth, maybe he and Mr. McCleery would be willing to provide further information at later meetings. One of the first things that they wanted to determine was whether or not the Solicitor General's Department actually believed that the A.P.L.Q. incident was an isolated one. Mr. Brunet admitted that he is a little confused between what was said at the first meeting on June 6 and what was said at the second meeting on June 23. He did say there were more details given at the second meeting than at the first. He said that at the June 6

meeting they started off by telling Messrs. Tassé and Landry that breaking and entering was a weekly occurrence in the R.C.M.P., and that when Mr. Landry said that they were aware it was necessary to break into premises to put in technical installations he, Brunet, told them that breaking and entering took place rather frequently for the purpose of gathering evidence or gathering information that might be useful, without any intention of putting in a technical installation. As a descriptive phrase in discussing such incidents he told us that he does not think he made a distinction between "breaking and entering" and "theft of documents" and that he would have used either phrase. He said that at the June 6 meeting he thinks he mentioned the subject of arson but did not think he mentioned the cottage on that occasion.

57. Mr. Brunet told us that the only purpose of the June 6 meeting, as far as he and McCleery were concerned, was to discuss their case and the circumstances of their dismissal, and the rest of it was absolutely incidental. He said that the only reason they mentioned wrongdoings was that once they were convinced that those with whom they were meeting really believed what the R.C.M.P. was telling them about the A.P.L.Q. case being an isolated one, they would show them that in fact there were any number of incidents of illegal acts being committed. If they could convince the officials of that, then Messrs. McCleery and Brunet hoped that the officials might be ready to accept that the R.C.M.P. was lying when referring to their case.

58. In a memorandum to file dated June 7, 1977 (not filed with us as an exhibit), Mr. Landry noted his recollection of the June 6, meeting with Messrs. McCleery and Brunet. In that memorandum he said that Messrs. McCleery and Brunet had submitted that they had been unjustly treated on their dismissal, that they had been harassed by certain members of the R.C.M.P. since their dismissal, that in their case the Solicitor General and the Commissioner had not been informed of all the relevant facts, that this was not the first time that the Solicitor General had been misled by the R.C.M.P., and that the R.C.M.P. only told the Solicitor General what it pleased them to tell. The memorandum (in French) continued by recording that Messrs. McCleery and Brunet indicated that much more serious acts had taken place while they were members, including:

> — participation and assistance to the C.I.A. in offensive activities in Canada;
>
> — numerous thefts of documents;
>
> — even arson (a cottage).
>
> They suggest that many discontented members can provoke scandals by confiding information in their possession to the parliamentary opposition.
>
> [our translation]

Mr. Landry noted that they did not wish their revelations to be seen as blackmail, that they stated that they had not disclosed any information to anyone else, and that they were giving the examples to convince Messrs. Landry and Tassé that the R.C.M.P. hid from the Solicitor General things that it ought to reveal. Mr. Landry said in his memorandum that Mr. Tassé had

asked for details of the alleged illegal acts but Messrs. McCleery and Brunet had declined to give any, but they had, however, left the impression that they would be willing to give more information at a later meeting.

59. Immediately after leaving the meeting with Messrs. McCleery and Brunet, Mr. Tassé went to the regular meeting, at the Solicitor General's office, between Mr. Fox and the R.C.M.P. Both Commissioner Nadon and Mr. Dare were among those present. Mr. Tassé made an oral report as to the meeting which he had just attended along the lines of a letter which he subsequently wrote on June 9, 1977, to Commissioner Nadon. An excerpt from that letter, in the English translation filed with us reads:

> During our meeting with the Solicitor General, I mentioned that Messrs. Brunet and McCleery had referred to the A.P.L.Q. incident by indicating that, when they were with the Force, the RCMP had conducted much more serious operations than this. Without giving specific details, Messrs. McCleery and Brunet did mention, among others:
>
> — assistance to the C.I.A. in espionage activities detrimental to Canada (prior to 1973);
>
> — espionage activities for business purposes in a case involving the Federal Department of Commerce (Trade and Commerce (?) Tr.) (May 1964);
>
> — arson (involving a cottage) about 1972 or 1973;
>
> — numerous thefts of documents.
>
> Messrs. McCleery and Brunet refused to elaborate further, but it is possible however that we may obtain more specific details concerning these statements at the meeting scheduled between the aforementioned parties and Attorney Landry.

60. Mr. Tassé told us that he indicated the general areas in which the allegations had been made and what little success they had had in getting details. Commissioner Nadon testified that at the meeting on June 6, 1977, he asked Mr. Tassé what the alleged improprieties were and Mr. Tassé listed three, four or five improprieties. Mr. Nadon testified that he, Nadon, then said:

> This is exactly the same information that we have received — that I received on the 1st of June and I now already have Supt. Nowlan and Mr. Pothier down in Montreal investigating this; but we would appreciate any further information you have on these, because we have difficulty in identifying some of the irregularities that are indicated.

Mr. Nadon said that he spoke to Mr. Tassé about the Robichaud memorandum, told Mr. Tassé that they had similar information coming from Montreal, and that he mentioned the various items or areas that had been brought to his attention by the Robichaud memorandum. He testified that it was obvious at the meeting on June 6, after Mr. Tassé related what Mr. McCleery and Mr. Brunet had told him, that it was the same information he, Nadon, had received on June 1.

61. Mr. Nadon told us that there is nothing in the R.C.M.P. files to indicate that Mr. Fox was informed of the setting up of the Nowlan/Pothier investigation team, or that anybody in the Department of the Solicitor General was

informed of it. Nor have R.C.M.P. research and that of our staff turned up any documentary evidence that any such information was communicated to the Solicitor General or his staff.

62. Commissioner Nadon told us that usually, on days before meetings with the Solicitor General, someone from the Commissioner's office would phone the Solicitor General's office and provide subjects that the R.C.M.P. wanted to discuss. He says there is no reference on the agenda for the meetings of June 6 or June 14 to an intended discussion of the Nowlan/Pothier investigation team.

63. The evidence of Mr. Tassé and Mr. Fox is contrary to that of Mr. Nadon. Mr. Tassé testified that at the meeting of June 6 no one mentioned the existence of the Robichaud memorandum and that he became aware of it only in the autumn of 1979, that at the June 6 meeting no one from the R.C.M.P. informed him that members of the R.C.M.P. had met prior to June 6 with Messrs. McCleery and Brunet, and that at no time during that meeting did the Commissioner or anyone else from the R.C.M.P. indicate that they had received other allegations or that they were aware of the allegations that he had just told them about. Mr. Tassé told us that the R.C.M.P. appeared to be surprised to hear the report that he gave them concerning the meeting with Messrs. McCleery and Brunet, that they did not seem to understand what Messrs. McCleery and Brunet were talking about and said that the burning of a cottage meant nothing to them, but that they would investigate in Montreal to see if there were some basis for the allegation. He added that the R.C.M.P. members present left the impression that what Messrs. McCleery and Brunet were doing had the appearance of blackmail. Mr. Tassé said that he had no recollection of anyone saying that an investigation was already under way, and that it was not until November 1977 that he learned that an investigation had begun before June 6.

64. The testimony of Mr. Fox was that on June 6 it was his officials who were advising the R.C.M.P. of information which was at that time still very vague and uncertain and which seemed to be without foundation. He testified that the R.C.M.P. did not communicate their own more detailed information. Mr. Fox said that at the meeting Mr. Tassé reported at length on the request of Messrs. McCleery and Brunet to have their dismissal file re-examined and recounted that the major part of his meeting with them had dealt with the question of their dismissal which they found unjustifiable after all the work they had done for the Force. He said that Mr. Tassé reported that Messrs. McCleery and Brunet had indicated that Mr. Fox had not been completely informed about their dismissal file and that there were other activities to their knowledge which Mr. Fox had also not been informed about, and that he, Tassé, had questioned them on those subjects. Mr. Fox told us that the general reaction of all those present at the meeting of June 6, including the R.C.M.P. officers, was that this had all the appearances of being blackmail by Messrs. McCleery and Brunet, and that under the guise of getting their file opened they said that there were all sorts of things that were not proper which had been committed by members of the R.C.M.P. Mr. Fox testified that Mr. Tassé asked members of the R.C.M.P. present, "Does any of this ring a bell?" and the general reply

was "no", and that his own reaction, after seeing the reaction of the R.C.M.P. and Mr. Tassé, was that this was an attempt at blackmail. He told us that he said to Mr. Tassé that as far as he was concerned there was no question of allowing any blackmail and that, if Messrs. McCleery and Brunet had anything to tell them, they should be forced to say it. Mr. Fox said that he asked Mr. Tassé to have Mr. Landry contact Messrs. McCleery and Brunet to enjoin them to meet again and get to the bottom of the allegations to determine whether they were valid. Mr. Fox said that the four items mentioned in Mr. Tassé's letter of June 9 to Commissioner Nadon were the matters which had been raised at the meeting on June 6. Mr. Fox testified that he asked Commissioner Nadon to look through the files in Montreal to see if any elements of proof or facts could be found which would indicate that the innuendoes had some basis in fact.

65. According to Mr. Fox, he has no recollection of the R.C.M.P. members present indicating that they were aware of any allegations by Messrs. McCleery and Brunet. Mr. Fox testified that he was not aware of the Robichaud memorandum or its contents, and that no one from the R.C.M.P. indicated that someone had been appointed to investigate allegations by Messrs. McCleery and Brunet or that an investigation had begun.

66. Mr. Simmonds, who was also present at the meeting on June 6, testified that he recalls Mr. Tassé reporting in very general terms on some of the things he had learned as a result of discussion with Messrs. McCleery and Brunet. He said that the June 6 meeting first brought to light some of the incidents which would have caused the Commissioner to initiate an investigation. He testified that he does not recall Mr. Nadon saying that the R.C.M.P. had already heard this type of allegation, nor does he recall having been informed that what Mr. Nowlan was investigating was allegations of improper behaviour that had been communicated by Mr. Robichaud. He said he does not have any recollection about having been told by any of his colleagues, either going to the meeting or after the meeting, that they were already aware of that type of allegation. According to Mr. Simmonds, at the meeting there was an air of concern, perhaps even a bit of an air of disbelief, because it was pretty hard to believe that some of the things that were being referred to could have occurred. He added that there was an absolute concern to get to the bottom of it and find out the facts, but that there was a good deal of scepticism about whether or not the facts were as described. He said that he was alarmed at what he was hearing, and concerned, and he recognized the necessity to get to the bottom of it and very quickly. He said he does not know whether Mr. Nadon reported at that meeting that he had taken steps to examine those allegations.

67. Mr. Fox testified that after the meeting Mr. Tassé came to his office and he thinks that Mr. Tassé's reaction at that time was that the allegations were without foundation, that they were hare-brained and related to the desire of Messrs. McCleery and Brunet to have their dismissal files reopened.

68. Mr. Tassé told us that it was in the days following June 6, in conversation with Commissioner Nadon or someone else in the R.C.M.P., that he learned

for the first time that Superintendent Nowlan was in Montreal for the investigation.

(iii) *The recording of the Tassé/Sexsmith telephone conversation*

69. Assistant Commissioner Sexsmith testified that he was "curious" as to what Messrs. Nowlan and Pothier "were discovering in Montreal" and "desperately wanted to know whether the allegations were based in fact or not". On Mr. Sexsmith's initiative, Superintendent Nowlan was reporting to him internally on the progress of the investigation. Mr. Sexsmith said that he assumed that Mr. Nowlan and Mr. Pothier knew that he "did not have any direct function in relation to the investigation *per se*". In their report of July 12, 1977, to Mr. Dare and Assistant Commissioner Quintal, Superintendent Nowlan and Inspector Pothier wrote "... it was also agreed that Assistant Commissioner M.S. Sexsmith, Deputy Director General (Operations) would serve as a daily contact, if need be, for progress outlines and for logistics as related to the investigation in general". Mr. Sexsmith said that he accepts that statement in their report as being an accurate statement and that he did not receive daily reports, but saw Mr. Nowlan sometimes when the latter returned to Ottawa, often on a Friday afternoon, when Mr. Nowlan would tell him in general terms how things were going.

70. Mr. Dare told Mr. Sexsmith about the meeting that Mr. Tassé had had with Messrs. McCleery and Brunet on June 6 and what Mr. Tassé had reported about that meeting. Mr. Sexsmith testified that the allegation that the Security Service had committed commercial espionage in 1964 "was most intriguing" to him and that he was "most curious" to know the details. On June 9, Mr. Sexsmith telephoned Mr. Tassé, for the purpose, he told us, of obtaining full details of that particular allegation. Mr. Sexsmith testified that he does not recall having seen the draft of Mr. Fox's statement dated May 31, 1977, which was sent by Mr. Tassé to Commissioner Nadon, nor, he said, does he recall ever having had any discussion either with Mr. Nadon or Mr. Dare as to the accuracy of that draft statement. He told us that he recalls that the draft statement was placed before the R.C.M.P., and that Messrs. Nadon and Dare were involved, but he does not recall either of them inquiring of him as to the accuracy of the text.

71. Mr. Sexsmith taped his telephone conversation of June 9, 1977, with Mr. Tassé. He testified that he taped that conversation for his

> ... own edification and the edification of the people that were going to have to do the research and attempt to tie in a particular operational file with a particular allegation, if the allegation had any substance of truth.

He told us that he phoned Mr. Tassé to get the details from him concerning the allegation of commercial espionage because he knew that, if that had occurred there would be a record of it at Headquarters. Mr. Tassé testified that Mr. Sexsmith did not tell him that the conversation was being recorded, that he did not know that it was being recorded, that Mr. Sexsmith did not tell him after the conversation that it had been recorded and that he was informed only much

later, without specifying precisely when. Mr. Tassé told us that if Mr. Sexsmith had asked his permission to record the telephone conversation he does not know whether or not he would have given it. He said he thinks it was inappropriate for Mr. Sexsmith to record without telling him and he considers it is unethical to record, either by stenographic notes or on tape, spontaneous conversations that one has with others.

72. Mr. Sexsmith told us that, within hours of having recorded the telephone conversation, he had it transcribed by his secretary, Mrs. Rita Baker. He said he did not show the transcript to Mr. Dare or Commissioner Nadon and that he gave it to either Superintendent Venner or Superintendent Barr.

73. Mr. Tassé told us that he recalls specifically mentioning to Mr. Sexsmith, during the telephone conversation, that an important aspect of the statement which Mr. Fox proposed to make to the House was that the A.P.L.Q. incident was an isolated incident, that there were allegations, although vague, which had been made by Mr. McCleery and Mr. Brunet, and that it was important that the R.C.M.P. get the information and advise the Minister's office whether or not there was any foundation for the accusations. Mr. Tassé said that he thinks it was clear in everybody's mind that the statement by Mr. Fox had to deal with the A.P.L.Q. but that in making the statement he must also make the point that the R.C.M.P. was determined to operate, and would operate, within the confines of the law and that the A.P.L.Q. incident was an aberration.

74. Mr. Tassé added that at no time in the telephone conversation with Mr. Sexsmith did Mr. Sexsmith indicate that he had, or might receive, information which would indicate that there was some foundation to the allegations or that there were other allegations.

75. The transcription of the telephone conversation, typed by Mr. Sexsmith's secretary, purports, on page 7, to reproduce the conversation as it related to the statement to be made by the Minister. Following is a reproduction of page 7, in its entirety. (The line numbers in the right hand margin have been added by us for ease of reference.)

R.T. I heard that Nowlan was in Montreal. Was he there to discuss with the Montreal people the kind of accusations or allegations that McCleery&Brunet had made. Have you received a report? [line 3]

M.S. No he hasn't even got started really yet. He's still in Montreal, yes.

R.T. Would it be possible for me to see your report on that?

M.S. When we get it sure but my God it will be some time Roger I expect.

R.T. Well, I hope there would be a preliminary report before the Minister makes the statement in the House because [line 12] everyone may be a bit on the spot - I think you have seen [line 13] the statement we're working on and they are strong statements [line 14] that this wasn't an - the APLQ - wasn't an isolated incident [line 15] and if right after making the statement they start talking about other things, I think many people will be in trouble. [line 17] So as soon as he comes back perhaps we could just have a progressive report or some kind of indication as to what [line 19] he has found and whether there seems to be any basis for [line 20] this.

M.S. Roger, one more thing. In Toronto, if your read the Citizen last night or the Globe and Mail this morning, they're making noises about suspicion that the RCMP committed a [line 24] breaking and entering of the James, Lewis and Samuels [line 25] Publishing Co.

R.T. It was mentioned by Oberle last week.

An analysis of the transcription, prepared for us by the Centre of Forensic Sciences of the Province of Ontario, discloses the following corrections in typing made to page 7:

line 3 — The first letter 's' in the word "accusations" was originally typed as the letter 'l'.

line 12 — The letter 't' in the word "the" was originally typed as the letter 'i'. The letter 'e' has an erasure, however, the original typewritten letter cannot be deciphered. The letter 'o' in the word "House" was originally typed as a capital letter 'O'.

line 13 — The letter 'e' was at one time typed to the right of the word "spot".

line 14 — The letter 'k' in the word "working" was originally typed as a '-', the letter 'i' as the letter 'k', the letter 'n' as the letter 'i' and the letter 'g' as the letter 'n'. The letter 'g' was at one time typed between the words "working and". The letter 'y' in the word "they" shows an erasure, however, the original typewritten letter cannot be deciphered. The letter 'e' was at one time typed between the words "they are".

line 15 — The letter 'w' in the word "wasn't" was originally typed as the letter 't' and the letter 'a' as the letter 'l'. The letter 's' shows an erasure, however, the original typewritten letter cannot be deciphered.

line 17 — The letter 'g' in the word "things" was originally typed as the letter 'l'.

line 19 — The letter 'g' in the word "progressive" was originally typed as the letter 'f'.

line 20 — The letters 'a' and 'n' in the word "and" were originally typed as the letters 'w' and 'h'.

line 24 — The letter 'a' in the word "making" was originally typed as the letter 'n'.

line 25 — The letter 'J' in the word "James" was originally typed as a small letter 'j'. The letter 'a' in the word "Samuels" was originally typed as the letter 'm'.

Numerous corrections of a similar nature had been made on other pages. It is apparent from the forensic report that the typist had considerable difficulty in transcribing the tape recording. It will also be observed that, if the transcription was accurate, Mr. Tassé told Mr. Sexsmith that the statement being prepared would say that the A.P.L.Q. was *not* an isolated incident. This — again, on the assumption that the transcription was accurate — would raise a question as to the statement as it was finally delivered by Mr. Fox in the House of Commons on June 17, when he said that the A.P.L.Q. incident was isolated. We shall examine this issue when we reach our conclusions.

76. Mr. Tassé said that he assumed that Mr. Sexsmith was aware that in the statement to be made by the Minister there was strong wording to the effect that the A.P.L.Q. incident was an exceptional and isolated one. Mr. Tassé testified that at no time, during the months preceding this telephone conversa-

tion with Mr. Sexsmith, did he, Tassé, participate in any way in the preparation of a draft statement, to be used by Mr. Fox in the House of Commons, which said that the A.P.L.Q. incident was *not* an isolated incident.

77. Mr. Sexsmith told us that although Mr. Tassé said, during the telephone conversation, that he, Sexsmith, had seen the statement they were working on, he did not recall having seen it and did not know anything about it. Mr. Sexsmith said that when Mr. Tassé referred to the speech that Mr. Fox was going to make in June it obviously didn't mean anything to him, Sexsmith, because he didn't comment on it at all. He told us that he has no recollection of having any "input" or discussion with Mr. Fox or Mr. Dare or Commissioner Nadon or the Head of the Policy Planning and Coordination Branch (Superintendent Barr) concerning the statement of Mr. Fox subsequently made on June 17 in the House of Commons.

78. Mr. Sexsmith testified that he knew on June 13 that Mr. Fox was preparing a statement for the House, because on that day he saw an English translation of the June 9 letter from Mr. Tassé to Commissioner Nadon which said that Mr. Tassé and his people were working on a statement.

79. An endorsement, containing Mr. Dare's initials, on the face of the transcript of the telephone conversation indicates that Mr. Dare saw the transcript on June 9, the day that it was recorded and transcribed. Yet Mr. Dare told us that he was not aware that Mr. Sexsmith proposed to tape his conversation with Mr. Tassé and became aware of the taping only long after the event, indeed, since the time of the creation of this Commission. Mr. Nadon testified that he was informed by Mr. Dare in June 1977 that there had been a conversation between Messrs. Tassé and Sexsmith but that he was not informed that it had been taped. He said that previous testimony given by him, to the effect that he had read the transcript before he left the Force, was inaccurate, and that he first learned of the taping of the conversation when he was preparing for the hearings, some considerable time after he left the Force.

(iv) *Mr. Fox's statement of June 17, 1977, in the House of Commons*

80. On June 14 Mr. Tassé forwarded to Commissioner Nadon a further draft of the proposed statement to be made by Mr. Fox, and asked for his and Mr. Dare's comments at the earliest possible time.

81. The draft statement of June 14, 1977, contained the following comments:

> The Hon. Warren Allmand undertook in the days immediately following March 16, 1976, to discuss the whole matter with the Prime Minister. The Government seriously considered the creation of a Royal Commission of Inquiry at that time. The Government received, however, repeated and unequivocal assurances from the R.C.M.P. that the A.P.L.Q. incident was exceptional and isolated and that the directives of the R.C.M.P. to its members clearly require that all of their actions take place within the law.

And later on in the draft is found the following:

> In the event doubts persist, I repeat, what I said earlier: an illegal entry into any premises, whatever the intention or purpose, is completely unacceptable

to me and to the government and is not, under any circumstances, to be tolerated. The commitment to this view is one that is shared by the Commissioner of the R.C.M.P. and by the Director General of the Security Service and will be the basis upon which any allegations of illegal conduct, either on the part of members of the R.C.M.P., whether of the Security Service or those involved in regular police activities, will be viewed.

And still later:

> In addition, I trust that my statement today will have dispelled all possible doubt concerning our commitment to ensure that the operations of the R.C.M.P. take place within the constraints of the law. In addition, the Commissioner of the R.C.M.P. and the Director General of the Security Service fully recognize the need to bring to my attention, clearly and unequivocally, any breach, on the part of their members, of the clear directives of the R.C.M.P. in that regard.

82. Mr. Tassé said that at least a couple of times in the course of his conversations with Commissioner Nadon about the draft statement he asked about the progress of the investigations in Montreal and was told that there was no progress, for one reason or another, and therefore there was nothing to report.

83. Commissioner Nadon testified that he found the draft statement of June 14 to be factually correct. He said that he recalls reading the sentence in the June 14 draft which says "The Government received, however, repeated and unequivocal assurances from the R.C.M.P. that the A.P.L.Q. incident was exceptional and isolated and that the directives of the R.C.M.P. to its members clearly require that all of their actions take place within the law." Mr. Nadon considered that this is what the R.C.M.P. had told the government prior to June 14 by correspondence and otherwise.

84. Mr. Tassé told us that in his opinion it was clear that the senior officers of the R.C.M.P. should immediately have told him if they had been aware of any foundation to the allegations made by Messrs. McCleery and Brunet. He told us that, if the part of Mr. Fox's proposed statement which referred to the exceptional and isolated character of the A.P.L.Q. incident was inaccurate, it should, under such circumstances, have been brought to their attention immediately by the R.C.M.P. The assurances had been given to them over the course of the years, according to Mr. Tassé, and he took it for granted that, if the assurances had been given, it was because the R.C.M.P. were in a position to give them. Mr. Tassé told us that the assurance that was given in his presence was that, as far as the senior officers of the R.C.M.P. were concerned, and as far as R.C.M.P. policy was concerned, members were supposed to live within the law and had been doing so and that anyone who did not live within the law was subject to be disciplined in the ordinary course.

85. Mr. Fox testified that there were no reservations in the assurance that had been given to him that there were no other illegal activities and he was convinced when those assurances were given to him that, if there were other cases within the knowledge of the R.C.M.P., they would be brought to his attention. He said that between May 31 and June 17 there was a series of

versions of the statement prepared which were always put to the R.C.M.P. for comment to ensure the accuracy and truth of the facts. He told us that during those weeks he and his officials were assured by the R.C.M.P. that the statements in question were accurate and that there was absolutely nothing communicated to him during the period from June 6 to June 21 that would have led him to believe that there was any foundation for the matters raised by Messrs. McCleery and Brunet.

86. Mr. Tassé said that at no time before June 17 was it indicated to him that the investigation by the R.C.M.P. seemed to reveal things which were troubling. He testified that between June 6 and June 29, 1977, he did not receive from anyone in the R.C.M.P. additional information or reports relative to the incidents or irregularities alleged by Messrs. McCleery and Brunet, or with respect to other allegations concerning members of the R.C.M.P.

87. On June 16, in response to a question in the House of Commons, Mr. Fox advised the House that the statement that he intended to make the following day would cover only the A.P.L.Q. matter and not other incidents raised in the House. On June 17, 1977, Mr. Fox made the statement in the House of Commons.

88. Mr. Fox testified that the undertaking which had been given to Parliament was to examine and make a statement in Parliament about the A.P.L.Q. incident and that the statement dealt with all matters relating to the A.P.L.Q. file. Mr. Tassé said that the statement was limited to the A.P.L.Q. affair, and that Mr. Fox did not wish to paint a complete picture of all that had gone on and all the accusations which had been made at that time against the R.C.M.P. Mr. Tassé added that what they wished to show by the statement was that illegalities within the R.C.M.P. were not tolerated and that, when they were discovered, measures were taken before tribunals or otherwise, and that it was not the practice of the R.C.M.P. to conduct operations which were contrary to the law and to have, in effect, institutionalized illegalities. Mr. Tassé explained that if an overzealous police officer or security officer burned a barn, that was not necessarily inconsistent with the statement that Mr. Fox had made in the House of Commons, provided that when an act like that was brought to the attention of officers or responsible members of the R.C.M.P., appropriate actions were taken at the time and the authorities responsible for the administration of justice in the province were advised of the matter.

89. Mr. Fox's statement of June 17, 1977, repeats almost word for word the June 14 draft statement previously cited. Mr. Fox told us that he still believes that the June 17 statement was correct at that time because, he said, the A.P.L.Q. matter "... was the only incident that had been confirmed to our knowledge ... it was the only incident that we had". [our translation]

90. Commissioner Nadon testified that, at the time he made the statement in the House Mr. Fox was aware of the other allegations that were being investigated, so he, Nadon, did not have to bring them to Mr. Fox's attention. Mr. Nadon said that he saw the statement of June 17 as being an accurate statement of the development of the A.P.L.Q. affair. However, he said that on June 17, *he* would not have given repeated and unequivocal assurances that the

A.P.L.Q. incident was exceptional and isolated and that he would have added to the statement that, because an investigation was on at the time, there were matters that had to be confirmed or denied. He said he did not make such an addition to the statement because Mr. Fox was already aware of the investigation. Mr. Nadon said that he brought to the attention of the Minister, clearly and unequivocally, any breach by members of the clear directives of the R.C.M.P.

91. Mr. Tassé told us that in the context of the events from May 31 to June 17, 1977, there is no doubt in his mind that the Robichaud memorandum should have been brought to his attention, as it would have been essential to enable him to advise the Minister. He added that the Robichaud memorandum disclosed facts which seemed at that time to confirm the presence of institutional irregularities, which was something Messrs. McCleery and Brunet had not disclosed to Mr. Tassé and, he said, the memorandum would have resulted in a completely different statement being prepared for delivery by Mr. Fox because it was not made by someone who had been fired from the Force for cause but by a member making a report to Headquarters. He indicated that in the Robichaud report ". . . one begins to see, without it having been established to the point that one could say there were criminal acts in the sense that a tribunal would so find, there were details which would have thrown a completely different light on the whole situation". [our translation]

(v) *Events subsequent to June 17, 1977*

92. On June 21 Mr. Fox met members of the R.C.M.P. The agenda included both a proposed meeting between Mr. Landry and Messrs. McCleery and Brunet and the Province of Quebec's inquiry with respect to the A.P.L.Q. matter. Since Commissioner Nadon and Deputy Commissioner Simmonds were both in the Atlantic Provinces at the time, they were not at the meeting. Mr. Fox testified that at that June 21 meeting there was no further information from the R.C.M.P. with respect to the allegations passed on to them on June 6 and that once again the R.C.M.P. members present raised the problem that the information which they had was so vague and imprecise that they had no way of going through the files to determine during what period or in what area things might have occurred. According to Mr. Fox, the R.C.M.P. said that they needed more information in order to come up with dates, places and times and that they needed a little more information as to the people involved before they could investigate properly the information provided by Messrs. McCleery and Brunet on June 6.

93. On June 23 Messrs. Landry and Handfield met with Messrs. McCleery and Brunet in Montreal and by memorandum dated June 24, 1977, reported the results to Mr. Tassé. Mr. Fox received a copy of it that same day, and Mr. Tassé gave a copy the following Monday, June 27, to Commissioner Nadon.

94. According to Mr. Fox, on June 27 or 28 he met with the Prime Minister to advise him of the developments. Mr. Fox said that the report of June 24 rid him of any idea he may have had of blackmail by Messrs. McCleery and Brunet.

95. Some time during the trip of Commissioner Nadon and Deputy Comissioner Simmonds to the Atlantic Provinces, between June 19 and June 24, Commissioner Nadon received a telephone call from Mr. Dare. Immediately following the call, according to Mr. Simmonds, Mr. Nadon told him that the R.C.M.P. had discovered a dirty tricks department, G4, and that they did not know the extent of its activities but that the investigation had confirmed some of the things that had been reported to the Deputy Minister. Mr. Simmonds told us that Mr. Nadon expressed great surprise and alarm at what he had been told. Mr. Simmonds said that he believes that the information received by Mr. Nadon in that telephone call came from the early work of Superintendent Nowlan's investigation, and that Superintendent Nowlan had confirmed some facts to Mr. Dare who had then telephoned to Mr. Nadon.

96. Commissioner Nadon testified that he does not know whether he had received any preliminary or interim reports before June 14 with respect to the Nowlan/Pothier investigation, and that he does not know whether, as of June 19, R.C.M.P. Headquarters had received any preliminary report. He said that an interim report was submitted by Messrs. Nowlan and Pothier on June 21, 1977. He added that he cannot say for certain that any information about the work of Messrs. Nowlan and Pothier was communicated to anyone in the Solicitor General's Department.

97. Commissioner Nadon stated that on June 29 Assistant Commissioner Quintal reported verbally to him, confirming that some of the irregularities that had been alleged had in fact occurred; prior to this briefing he had had other briefings by telex and advice from Mr. Dare with respect to the investigations.

98. Mr. Fox said that he met with R.C.M.P. officers on June 29 and at that meeting Commissioner Nadon told him that he could now verify that the preliminary investigations showed that the allegations were well founded concerning a burning, a theft of dynamite and problems of recruitment of sources. Mr. Fox said this was the first time he heard talk of theft of dynamite, or allegations concerning recruitment of sources. On June 29, Commissioner Nadon wrote to Mr. Fox requesting that a commission of inquiry be appointed.

99. On July 6, 1977, Mr. Fox made a statement in the House of Commons which included the following:

> Since making my statement in the House concerning the APLQ incident, allegations have been made that members of the RCMP, and more particularly members of the Security Service, have, on other occasions, been involved in unlawful action in the discharge of their duties. The APLQ incident, according to those who made the allegations, was not of an isolated and exceptional character as I had reported in my statement of June 17.
>
> These allegations received our immediate attention. At my request, the Deputy Solicitor General of Canada and the Assistant Attorney General, criminal law, personally met with some of the individuals who made these allegations. In addition, I asked the Commissioner of the RCMP to undertake the investigations which were warranted. He later informed me, after having made preliminary inquiries, that some of these allegations might well have some basis in fact.

(vi) *Knowledge of the Ministers, senior government officials and senior members of the R.C.M.P.*

100. We have already set out in Part III of this Report the extent to which Mr. Allmand, Mr. Fox and Mr. Tassé did or did not have knowledge of the various illegal practices of the R.C.M.P. However, it is now necessary to summarize that information in order to assess the extent, if any, to which they were deceived by the assurances of the R.C.M.P.

101. We have also set out in Part III a detailed examination of the knowledge of Commissioner Nadon and Mr. Dare with respect to those same practices. Because they were the persons giving the assurances, it is also necessary to summarize their knowledge to arrive at a determination as to deception.

Mr. Allmand

102. In March and April 1976 the only activities of the R.C.M.P., about which Mr. Allmand was aware, that give rise to questions of legality were surreptitious entries for the purpose of observing or photographing documents. Mr. Allmand believed, however, that such entries were legal. He was also aware of surreptitious entries for the purpose of installing electronic eavesdropping devices and had been told, specifically, that such entries were legal. At that time Mr. Tassé's state of knowledge was the same as Mr. Allmand's. By letter dated June 9, 1976, from Mr. Cullen to Mr. Allmand, both Mr. Allmand and Mr. Tassé became aware that the R.C.M.P. obtained information from the Department of National Revenue for purposes other than the enforcement of the provisions of the Income Tax Act and also became aware that this was contrary to the confidentiality provisions of the Income Tax Act. Neither Mr. Allmand nor Mr. Tassé was aware of any instance of such violations.

Mr. Fox

103. On June 17, 1977, Mr. Fox was aware of surreptitious entries for the purpose of installing electronic interception devices. He believed that such entries were legal pursuant to the provisions of the Protection of Privacy Act and relied on a legal opinion of the Department of Justice to that effect. Mr. Fox had also received an opinion to the effect that the words "interception of communications" in the Official Secrets Act could apply to written communications as well as oral communications. Mr. Tassé's knowledge on this subject at this time was the same as that of Mr. Fox.

Mr. Nadon

104. We have had a great deal of difficulty in assessing the knowledge of Mr. Nadon, who, as Commissioner, was the principal spokesman for the Force. In 1976 he had been a member of the R.C.M.P. for 35 years, during which he had worked his way from the bottom of the organization to the top. He says he knew nothing about mail-opening except to the extent that it involved postal officials and that it was, he assumed, legal. Yet the evidence is clear that, for years, both the C.I.B and the Security Service had been opening mail illegally, and in the Security Service an official code word, Cathedral "C", had been

given to the practice. We have no doubt that Mr. Nadon was aware of the code word, Cathedral, prior to 1976, probably at least as early as August 1974 when he reviewed the Samson Damage Report with Mr. Dare. There is no evidence that Mr. Nadon made any effort to find out what Cathedral operations involved.

105. Mr. Nadon was aware of the practice, on both the C.I.B. and Security Service side, by which members while on private premises observed documents, and made notes of, or photocopied, the documents. He was, however, not aware of this being done on the C.I.B. side during entry into premises "illegally", by which he appears to mean without the consent of a person entitled to give consent or without a search warrant, and his evidence with respect to the Security Service side is ambiguous at best. Once again, he was clearly aware, at least as early as 1974, of the Security Service code word for such entries without warrant (PUMA), but appears not to have been interested in pursuing the matter.

106. With respect to access by the Force to income tax information, to be used for purposes unrelated to enforcement of the Income Tax Act, the only knowledge that Mr. Nadon had about such access was with respect to biographical data, and he considered it to be a question of legal interpretation as to whether such data was included in the proscription of the statute against disclosure.

107. Although Mr. Nadon says that he did not become aware of Operation HAM until after he left the Force, we have concluded that at least some aspects of it were brought to his attention at the time that he discussed the Samson Damage Report with Mr. Dare. We accept Mr. Nadon's evidence that he probably did not read that report. We have no doubt from Mr. Nadon's evidence that Operation HAM, which is mentioned in that Damage Report, was discussed with him by Mr. Dare in August 1974, although we cannot say to what extent the details, or even the code name, were given to him. Whatever the extent of his knowledge, Mr. Nadon did not choose to inquire further.

108. We conclude that in March and April 1976 Mr. Nadon could, based on what he knew personally, provide the general assurances that he did at that time. But that is not to say that it was proper, under the circumstances, to give those assurances. We shall deal with this question in the conclusions to this chapter.

Mr. Dare

109. Mr. Dare also gave general assurances. His assurances are even more significant since he was speaking on behalf of the Security Service and it should have been clear to him at that time, even if it was not clear to others outside the Force, that Mr. Nadon appeared to be almost totally unaware of techniques used or operations carried out by the Security Service.

110. Late in 1973 or in early 1974, Mr. Dare was briefed about Cathedral A, B and C operations and was advised that these operations had been suspended on June 23, 1973. He did not know, at that time, of any particular Cathedral

"C" (mail opening) operation that had been carried out and he first became aware of a specific operation in June 1976. In the Samson Damage Report, which he received from his Deputy Director General (Operations) in August 1974, he was clearly made aware that "mail intercepts" were occurring. Although when he himself used the word "intercept" in relation to mail he meant "open", he apparently did not inquire further of his Deputy Director General (Operations) as to what the latter meant in this regard in the Damage Report.

111. Mr. Dare was aware, from some time shortly after becoming Director General on May 1, 1973, that the Security Service conducted surreptitious searches of premises, without warrants. In his opinion such searches between May 1, 1973, and June 30, 1974, were illegal and, after the Privacy Act came into effect on July 1, 1974, such searches, which were then, as far as he knew, always conducted in conjunction with an oral communication warrant granted under the new legislation, were legal. It is not clear from his testimony whether his opinion as to the illegality of the searches prior to July 1, 1974, was an opinion that he held between May 1, 1973, and June 30, 1974, or whether it was an opinion arrived at later.

112. Mr. Dare was aware from 1974 that the Security Service was obtaining income tax information from the Department of National Revenue for purposes totally unrelated to enforcement of the Income Tax Act. He did not consider such conduct to be illegal, although he did not direct his mind to the question of legality.

113. Mr. Dare knew about Operation HAM as early as August 1974. He testified that he did not consider it to be illegal, and that he did not consider it to be a seizure because the tapes were returned. This is impossible to reconcile with his evidence that he considered surreptitious entries to search, prior to July 1, 1974, to be illegal.

Conclusions

(a) As to misleading generally

114. Our concern, here, is the extent to which the senior R.C.M.P. officers, who dealt directly with the Solicitors General in 1976 and 1977, misled them. On March 16, 1976, the participation of the R.C.M.P. in Operation Bricole was first brought to the attention of Mr. Allmand and Mr. Tassé by the R.C.M.P. In March and April 1976 both Commissioner Nadon and Mr. Dare gave specific assurances to Prime Minister Trudeau, Mr. Allmand, Mr. Tassé and Mr. Pitfield that Operation Bricole was an exceptional and isolated incident. The only reservation they expressed was with respect to surreptitious entries for the purpose of carrying out electronic eavesdropping.

115. In Mr. Nadon's letter of April 23, 1976, to Mr. Allmand and in the proposed statement for use by the Minister which was attached to it, are found the following statements previously cited:

> 4. On the advice of the present Director General of the Security Service, I am prepared to assure you, without equivocation, that there is no precedent

> for a search and seizure operation by the Security Service in Montreal, acting alone or in concert with other Police Forces, and there has been no repetition.
>
> . . .
>
> 10. My assurance that there has been no previous case of its kind and that such action has not been repeated by the Security Service in Montreal, will, I trust, assist you in disposing of this isolated incident to the satisfaction of the Government and the House.

and,

> This is the only incident wherein the RCMP Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation, alone or in concert with members of other policy agencies.

This letter and draft statement were prepared by the Security Service, approved by Mr. Dare and submitted by him to Commissioner Nadon for signature. It is true that the assurances in those two documents are not general in nature. The letter speaks specifically of "a search and seizure operation by the Security Service in Montreal" and of "no previous case of its kind" and still further "that such action has not been repeated by the Security Service in Montreal". The draft statement is slightly broader in that it talks of Operation Bricole being "the only incident wherein the R.C.M.P. Security Service has, without the benefit of a search warrant, engaged in a search and seizure operation", thus not limiting the matter geographically to Montreal. We are convinced, based on the evidence of Messrs. Allmand and Tassé, that the assurances sought and given verbally in March and April 1976 were of a general nature to the effect that there were no R.C.M.P. activities which, although illegal, had been authorized or condoned by the Force, and that such assurances were not limited by the type of language found in the letter and draft statement. We accept Mr. Tassé's evidence that the only reservation expressed by the R.C.M.P. was with respect to surreptitious entries to install electronic eavesdropping devices prior to the coming into force of the Protection of Privacy Act in 1974. We are satisfied that the assurances given by the R.C.M.P. were made by Commissioner Nadon and Mr. Dare. It is clear that the assurances given by the R.C.M.P. were the principal factor which motivated the government not to set up a Commission of Inquiry in 1976. It is therefore important to determine the extent to which both those giving the assurances and those to whom they were being given knew that such assurances were not accurate.

116. Having regard to what he knew in March and April 1976 we are of the opinion that Mr. Dare either intentionally or negligently misled both the Solicitor General and the Prime Minister and thus permitted the government to adopt a course of action which it undoubtedly would not have followed had he not so misled them. Whether he uttered the assurances himself or remained silent while Commissioner Nadon made them, the effect is the same. He allowed general assurances to be given that there were not, and had not been, other activities of the R.C.M.P. which were illegal and had been authorized by the Force. He knew there had been a practice of surreptitious entries between May 1, 1973, and June 10, 1974, which, according to his testimony, he

considered to be illegal. He knew about Operation HAM and told us that he had considered it not to be illegal, and that he also considered that Operation Bricole was not illegal, yet he approved the draft letter of April 23, 1976, sent by Commissioner Nadon to Mr. Allmand, which stated: "The operation was clearly contrary to the rule of law, the very basis on which this Force is founded". He should have candidly discussed all these matters with Commissioner Nadon, and if Commissioner Nadon had not then revealed them to the Solicitor General and the Prime Minister, Mr. Dare ought to have done so himself. We consider that there is no justification whatsoever for this course of conduct on his part.

117. We turn now to 1977. In January 1977, the same general assurances were given to the new Solicitor General, Mr. Fox, as had been given in 1976 to both his predecessor, Mr. Allmand, and to the Prime Minister. The assurances were again given by Commissioner Nadon and Mr. Dare. By this time two things had occurred which changed the picture slightly. First, in July 1976, Mr. Dare had been informed by Assistant Commissioner Sexsmith of a specific mail-opening operation which had been going on in the Ottawa area, and that it had been terminated. Thus, Mr. Dare was now aware not only that there had been a mail opening policy but also that there had been an operation. Second, in June 1976, the Minister of National Revenue, Mr. Cullen, had informed the Solicitor General, Mr. Allmand, by letter, that there were "technical" violations of the Income Tax Act "when tax information is provided to the Force for purposes other than those of the Income Tax Act". Commissioner Nadon saw that letter.

118. In the present context we place little significance on the reference, in Mr. Cullen's letter, to "technical" violations. It was clear that amendments to the Act were being proposed by the Department of National Revenue and Mr. Allmand was aware of that fact. Commissioner Nadon and Mr. Dare could reasonably infer that, upon assuming the Solicitor General's portfolio, Mr. Fox had been apprised by his Deputy Minister, Mr. Tassé, of the situation. We have no evidence as to whether or not that, in fact, happened.

119. Following the meeting on January 25, 1977, at which the assurances were given to Mr. Fox, the latter met with the Prime Minister, at which time the appointment of a Commission of Inquiry was once again discussed and rejected. There was still nothing of consequence that had been placed before the Ministers except Operation Bricole.

120. We consider that Mr. Dare was duty bound to bring to the attention of Commissioner Nadon and Mr. Allmand the knowledge which he had received about the mail-opening operation in Ottawa. At the time that the assurances were being given to Mr. Fox that there were no other illegalities, Mr. Dare also ought to have brought to Mr. Fox's attention his knowledge about Operation HAM, surreptitious entries and the provision of income tax information to the Security Service. Again, we can find no justification for his conduct at that time.

121. There was no relevant change in the factual information that Commissioner Nadon had between April 1976 and January 1977 and we do not find

that he intentionally deceived Mr. Fox in giving the general assurances that he did. However, with respect to the general assurances given in both 1976 and 1977 we think that he was derelict in his duty in not having pursued some matters, the significance of which should have sprung out at him. Had he done so, he would not have been in the position of misleading two Solicitors General and the Prime Minister and, through them, the House of Commons and the people of Canada. There can be no excuse for his not having inquired into Cathedral Operations, PUMA Operations, and Operation HAM. These were all brought to his attention, whether in the form of a code word or otherwise, at least as early as his discussions with Mr. Dare on the Samson Damage Report. As Commissioner of the R.C.M.P. it was his duty to know what the policies of both the Security Service and the C.I.B. sides of the Force were, and to make appropriate inquiries about matters with which he was not familiar. It was improper conduct on his part to give assurances to his Ministers and the Prime Minister when he had turned a blind eye to what was occurring in the Security Service.

122. On May 31, 1977, Mr. Tassé sent to Commissioner Nadon the draft of Mr. Fox's intended statement to the House of Commons. The draft statement contained the following comments:

> I want to emphasize, in no uncertain terms, that entry of premises without lawful authorization, whatever the intent or purpose, is not acceptable to me and the government and cannot, under any circumstances, be condoned. I can assure Honourable members that this position is shared by the Commissioner of the R.C.M.P. and the Director General of the Security Service and that any allegations of unlawful action on the part of members of the Force, whether on the security side or the criminal side of the Force, will be vigorously pursued.
>
> In a democratic society like Canada, it is essential that those charged with the enforcement of our laws and the protection of fundamental freedom have the full support of Canadians. Such a support, in turn, can only result from the trust Canadians have that police forces operate within the limits of the laws in the discharge of their responsibilities. I hope that my comments today will have convinced you, Mr. Speaker and Honourable members, as well as Canadians, at large, that the A.P.L.Q. operation was indeed an exceptional and unique affair, indeed an unfortunate affair. I trust that any doubt that may have arisen as to our determination as a government, or the R.C.M.P. determination, to abide by the rule of law will have been dispelled.

123. On May 31, 1977, Superintendent Robichaud prepared a memorandum setting out the matters that Mr. McCleery had said he might disclose to the Solicitor General. Those matters were:

(a) a "... dirty tricks department (DTD) that involved Inspector Hugo, Inspector Blier and Bernard Dubuc who ... would have been responsible for a kidnapping...".

(b) "... an FLQ hideout near Sherbrooke that burned and again he alleges that some of those members were involved".

(c) "... his own summer cottage in the Laurentians had been used by the Force to store dynamite".

(d) "... the Force has been responsible for Securex losing a number of contracts and that they keep harassing them".

In the memorandum Mr. Robichaud added the following:

(a) "Insofar as the dirty tricks department, I believe this was the counter-measures taken by "G" Section in certain instances at that time and the alleged kidnapping would have been a disruptive source recruiting attempt made on one Andre Chamard, [File number]".

(b) "the counter-measures group was comprised of the 3 people he mentions as well as Cst. Rick Daigle who, if memory serves me right, was a close associate of Don McCleery's".

(c) "The alleged kidnapping would have taken place about June 8th, 1972 at a time when McCleery would have been in "G" Section."

On June 1, 1977, Commissioner Nadon and Mr. Dare saw this memorandum. Commissioner Nadon immediately appointed two investigators to look into what Mr. McCleery had alleged.

124. On June 6, 1977, Messrs. Tassé and Landry met with Messrs. McCleery and Brunet. At that meeting Messrs. McCleery and Brunet made some general allegations of serious misconduct on the part of the R.C.M.P. Mr. Landry noted those allegations in part as:

— participation and assistance to the C.I.A. in offensive activities in Canada;

— numerous thefts of documents;

— even arson (a cottage).

[our translation]

Mr. Tassé noted them in a letter to Mr. Nadon as:

— assistance to the C.I.A. in espionage activities detrimental to Canada (prior to 1973);

— espionage activities for business purposes in a case involving the Federal Department of Commerce (Trade and Commerce (?) Tr.) (May 1964);

— arson (involving a cottage) about 1972 or 1973;

— numerous thefts of documents.

[English translation, Ex. MC-149.]

125. On June 6, 1977, immediately following that meeting, Mr. Tassé attended a meeting at which those present included Mr. Fox, Commissioner Nadon and Mr. Dare, and he told them what Messrs. McCleery and Brunet had alleged. We are convinced by the evidence of Mr. Fox, Mr. Tassé and Mr. Simmonds (then Deputy Commissioner) that no member of the R.C.M.P. present at that meeting gave any inkling to Mr. Fox or Mr. Tassé that an investigation of allegations by Messrs. McCleery and Brunet was already in progress, or even that the R.C.M.P. had knowledge of any such allegations. We note that at least one allegation, that relating to the burning of a building, is common to both the Robichaud memorandum and what was conveyed by Mr. Tassé to the meeting. We also note that there were more details of this incident already in the possession of the R.C.M.P. than had been conveyed by Messrs.

McCleery and Brunet to Mr. Tassé and relayed by him to the meeting. We are also convinced that at the meeting the R.C.M.P. officers present left the impression with Mr. Fox and Mr. Tassé that this was the first they had heard of any such allegations, that they were surprised by them and that it was likely that Messrs. McCleery and Brunet were simply attempting blackmail to obtain a reversal of their dismissal. We do not accept Commissioner Nadon's evidence that he told Mr. Tassé, at the meeting, about the information that he already had through the Robichaud memorandum and that he had appointed investigators to look into the allegations.

126. Had Commissioner Nadon and Mr. Dare advised Mr. Fox and Mr. Tassé about the allegations which were already under investigation, Mr. Fox and Mr. Tassé might have, and probably would have, taken a totally different position as to what ought to be done. The allegations in the Robichaud memorandum are much more precise and capable of investigation than those made by Messrs. McCleery and Brunet on June 6, 1977, and thus, if they had been known to Mr. Fox and Mr. Tassé, would have given rise to much more suspicion that there might have been some substance to them. Commissioner Nadon and Mr. Dare, however, allowed Mr. Fox and Mr. Tassé to continue in their ignorance of the existence and contents of the Robichaud memorandum after June 6, while consideration was being given to further drafts of the statement to be made by Mr. Fox, and even after the statement had been made by him on June 17, 1977. They allowed Mr. Fox to take a position and to make statements which he clearly would not have made had they made him aware of all the facts in their possession. Commissioner Nadon's evidence that Mr. Fox's statement was factually correct is spurious, and shows a measured contempt for the concept of ministerial responsibility and accountability. Mr. Nadon knew that the intention of the statement was to assure the House of Commons and the Canadian public that Operation Bricole was "exceptional and isolated" and that the R.C.M.P. had not engaged in any other illegal activities, and he also knew that he had under investigation some serious allegations in which names and geographical locations had been given. We believe that both Mr. Nadon and Mr. Dare intentionally deceived Mr. Fox by withholding information from him and that the purpose of such deceit was to attempt to save face for the Force. This conduct was both misguided in motive, and wrong.

(b) The Tassé/Sexsmith telephone conversation

127. We now wish to comment on the telephone conversation of June 9, 1977, between Assistant Commissioner Sexsmith and Mr. Tassé. That telephone conversation was initiated by Assistant Commissioner Sexsmith and was tape-recorded by him without the consent or knowledge of Mr. Tassé. There is, of course, nothing illegal in recording a telephone conversation to which one is a party. Nevertheless, under the circumstances we think that Mr. Sexsmith's conduct was unacceptable conduct by a member of the R.C.M.P. in his dealings with a government official. We cannot think of anything more calculated to destroy the conditions of trust which must exist between the senior management of the R.C.M.P. and senior officials in the government, than this type of conduct. There is more than a touch of irony in the words of a

written communication, dated January 6, 1976, from Mr. Sexsmith to the R.C.M.P. Liaison Officer in Washington, in which Mr. Sexsmith was explaining the reasons for the termination of Warren Hart as a source of the R.C.M.P. Mr. Sexsmith said, among other things:

> The very fact that he [Hart] would surreptitiously tape an interview he held with the Solicitor General attests to his scruples.

128. As far as the transcript of the tape recording is concerned, we are satisfied that the statement attributed to Mr. Tassé on page 7 of the transcript does not accurately reflect what he said. The part in question reads:

> R.T. Well, I hoped there would be a preliminary report before the Minister makes the statement in the House because everyone may be a bit on the spot — I think you have seen the statement we're working on and they are strong statements that this wasn't an — the APLQ — wasn't an isolated incident and if right after making the statement they start talking about other things, I think many people will be in trouble.

This leaves the impression that Mr. Tassé said that the draft statement being prepared for delivery by Mr. Fox contained a statement that Operation Bricole was *not* an isolated incident. There are a number of reasons for our conclusion that the transcript is inaccurate. First, there is Mr. Tassé's sworn testimony that no draft of the statement ever said that Operation Bricole was not an isolated incident. We have no reason whatever to doubt the evidence of this public servant. There is no evidence that suggests that after the preparation of the draft in May, which contained words to the opposite effect, something had occurred which would have caused the draft to be amended on this point. Second, the forensic analysis of the transcript, performed on our behalf by an independent body, discloses that the typist had a great deal of difficulty in transcribing the tape, and not only with respect to page 7. The evidence is clear that whoever typed the transcript, whether it was Mr. Sexsmith's secretary, Mrs. Baker, or someone else, was not someone trained to transcribe recorded telephone conversations. It is easy to speculate how an error could have been made. The words "they are" in the sixth line of the portion quoted above could have been "their's are" — the analysis performed on our behalf shows that the typist had difficulty with the words "they are" in that line. Alternatively, the two words "wasn't an" where they appear in line seven could have been "was an". Whatever the error, we are convinced that one has been made because, without some such correction, it is clear that what Mr. Tassé is quoted as saying makes no sense.

C. POSTCRIPT

129. We now examine one allegation and one factual situation that are related to each other in terms of certain facts and therefore must be considered together. The first is that before October 6, 1972, a federal Cabinet Minister urged that the A.P.L.Q. be destroyed, even by illegal means. Logically, perhaps, this allegation should be discussed as part of our report on Operation Bricole itself (Part VI, Chapter 9). However, as the second of these two

matters must be reported on in the present chapter, and the two are so intertwined, we have decided that they should both be reported on here. The second matter is a meeting which was held on September 10, 1973 (eleven months after Operation Bricole), the notes of which *might* on their face justify the inference that Ministers present were then made aware that the R.C.M.P. had engaged in a "break and entry" of the A.P.L.Q. office in October 1972. If that were so, of course, it would be very pertinent to the present chapter's examination of whether the R.C.M.P. reported Operation Bricole to the Solicitor General and officials of the government. As will be seen, we conclude that the allegation that before October 6, 1972, a federal Cabinet Minister urged that the A.P.L.Q. be destroyed, even by illegal means, is unfounded, and that, at the meeting of September 10, 1973, the R.C.M.P. did *not* disclose that it had engaged in a "break and entry".

(i) An allegation that a Cabinet Minister urged before October 6, 1972 that the A.P.L.Q. be destroyed, even by illegal means.

130. We now examine an allegation concerning which we heard all testimony *in camera* because we considered that the lengthy investigation conducted by our counsel had already raised substantial doubt about the accuracy of the allegation, and we felt that it would be grossly unfair to those impugned by the allegation if, after the initial sensation the allegation would create, it proved unfounded. If our conclusion on the evidence were that the allegation was well-founded, the testimony could be read by all, beyond such detail as we might insert in our Report, and our reasons might be judged against the testimony as published.

131. We initiated this investigation after one of us, on February 8, 1980, during the course of reviewing another Security Service file at R.C.M.P. Headquarters, came across memoranda made in September 1977 of a meeting between an R.C.M.P. officer and a person whom we shall refer to herein as "the public servant", and of a further short meeting between them several days later.

132. The *in camera* testimony was heard on October 8 and 28, November 20 and December 4, 1980, and is found in Volumes C109, C112, C115 and C117.

133. In the first of these memoranda, the public servant was reported to have made a serious allegation to a senior officer of the Security Service on a social occasion in September 1977. As then reported by that officer, it was that he had in his possession some Unemployment Insurance Commission (U.I.C.) files relating to suspicions of fraud by members of the A.P.L.Q. against the U.I.C. The report of the conversation then stated that, according to the public servant, the files reflected a Cabinet meeting where no minutes were to be kept on the subject of conversation, and that three officials from the U.I.C. "were at a cabinet meeting with Mr. Starnes and Howard Draper". The report then continued (still referring to what the public servant said):

> The point of discussion at the Cabinet meetings was the extensive frauds by groups like the APLQ. According to [the public servant], five Quebec Ministers were involved and he named Mr. Marchand, Marc Lalonde, Mr. Pelletier, Jean-Pierre Goyer and the Prime Minister. He said

that what had surfaced were the fraudulent employment lists these groups were drawing funds against. He said that from what he had read on these files, Mr. Lalonde is alleged to have told the Director General and Mr. Draper that he didn't care how things were handled, the groups must be destroyed, implying by any means even outside legal bounds. The way [the public servant] put it, it would appear that C/Supt. Don Cobb may be carrying the can in order to protect politicians like Mr. Lalonde.

134. When we discovered the existence of this allegation, by coming across it in a Security Service file in February 1980, we instructed counsel to investigate it thoroughly. During that investigation the public servant repeated his allegation in a statutory declaration. At the conclusion of the investigation we decided that the matter should be the subject of testimony, and we also decided that the testimony should be heard *in camera*.

135. We heard the testimony of the public servant. He has no personal knowledge of the matter. As he had by the time of his appearance retired from the public service, he no longer was in possession of any relevant documents. Neither he nor anyone else could produce any minutes or notes of any kind of such a meeting held before Operation Bricole was carried out on October 6-7, 1972. It will be noted that, on the face of what the public servant said the files disclosed, there was an evident inaccuracy in that at that time Mr. Lalonde was not a Minister nor even a Member of Parliament. However, that error alone would have been insignificant, if the rest of the report were correct. If the report were generally accurate, there was a documentary record of serious involvement by those Ministers said to have been present, in that, unless Mr. Lalonde's instructions were repudiated by them, they might be taken to have tacitly authorized even illegal action to disrupt the A.P.L.Q.

136. We are completely and unreservedly satisfied that there is no truth whatsoever to this allegation, for the following reasons:

(a) In his testimony, the public servant gave the following crucial answer:

> Q. Do you recall from your reading of the memorandum whether it attributed specific remarks to any individual person?
>
> A. Yes. The notes indicated, what I took from the notes was that Marc Lalonde had indicated in very forceful and strong words that the police were to do what was ever necessary to obtain the necessary evidence and to break up this organization.
>
> (Vol. C109, p. 14074.)

Earlier, in the statutory declaration which he gave us, he said, to the same effect:

> The typed text of the notes of the meeting recorded that the R.C.M.P. members briefed the Cabinet members on the results of the investigation into U.I.C. frauds, which results were disclosed by the messages in the envelope. The typed text then recorded Mr. Lalonde as having told the R.C.M.P. members, in the most forceful terms, to take whatever steps were necessary in order to destroy the A.P.L.Q. and the other groups reportedly responsible for the frauds.

He testified that the memorandum was dated October 1972 (Vol. C109, p. 14073). He told us that he read the memorandum on two occasions. He stated that he had not told the senior R.C.M.P. officer that, according to the notes, Mr. Lalonde said he did not care how things were handled and that the groups including the A.P.L.Q. must be destroyed. He further told us that he did not tell the senior R.C.M.P. officer that the notes conveyed that Mr. Lalonde was implying that this should be done by any means, even outside legal bounds. According to him,

> I only indicated to him [the senior RCMP officer] that there were names of Cabinet Ministers that had been briefed, and up to this point in time [September 1977] this information had not come forward, and I felt this was information that would be helpful to the police; that these Cabinet Ministers had received such a briefing.
>
> (Vol. C109, pp. 14245-6.)

The testimony of the public servant is contrary to that of the R.C.M.P. officer and contrary to the contents of the memorandum the R.C.M.P. officer prepared in September 1977. We believe the R.C.M.P. officer's testimony and his memorandum to be the correct version of what the public servant said.

(b) The public servant, in the statutory declaration which he gave us in April 1980, almost six months before he testified, stated as follows:

> 8. I did not read the full text of the handwritten notes of the meeting. The typed text seemed to be a transcript of the handwritten notes. That typed text was about two and one half pages in length. I read all of that typed text while Mr. Williams was present.

However, when testifying he claimed that he read both the handwritten and the typed notes to compare them, sentence by sentence (Vol. C109, pp. 14126, 14155.)

(c) The public servant testified that a memorandum he wrote on August 11, 1977, to his Deputy Minister, that referred to a meeting attended by members of the U.I.C. with federal Quebec Ministers and R.C.M.P. members (but did not refer to anything in the nature of instructions to destroy the A.P.L.Q. or even give the date of the meeting) was written "approximately six or seven months" after representatives of our Commission of Inquiry first "came to our Department, to explain that they would like certain documents related to the inquiry that the Commission was making". As we were appointed in July 1977, and had no legal counsel or investigative staff who could make any inquiries until October 1977, it is clear that the public servant was completely in error on this point.

(d) The public servant testified that, when he spoke about this matter to the senior R.C.M.P. officer, he did so at the latter's office, and that it was the only matter discussed. The senior R.C.M.P. officer testified that this was only one of a number of matters the public servant discussed at a luncheon the two men had together at a restaurant. His contemporaneous memorandum of the luncheon is to the same effect. We unhesitatingly prefer the evidence of the R.C.M.P. officer to that of the public servant. The R.C.M.P. officer's memo-

randum, the entirety of which we have read, is a long account of the public servant's views on a number of matters, and could not, we feel certain, have been invented.

(e) Mr. Hugh Williams, who in 1977 was head of the Special Investigation Division of the Canada Employment and Immigration Commission (successor to the U.I.C.), denied that the files he gave the public servant in 1977 referred to a meeting in 1972. We have no reason to disbelieve Mr. Williams.

(f) There is an explanation which enables us to accept that the public servant's understanding of the content of the documents he had read is not completely faulty, and that he is simply mistaken as to important details. There was indeed a meeting of some Ministers concerning frauds against the U.I.C. across Canada, and the discussion included a reference to the A.P.L.Q. The Ministers were concerned that there be prosecutions of offenders. At the time of our hearings we had read handwritten notes, made, we believe, by an employee of the U.I.C., of a "Briefing to Cabinet" on September 10, 1973 (i.e. eleven months *after* the Bricole operation). The notes indicate that Mr. Lalonde — who by this time was Minister of National Health and Welfare — was present, and opposite his name, for some reason, the notes show "(P.M.)". The Chairman was shown, not as the Prime Minister, but as the Honourable Robert Andras. The notes show that the R.C.M.P. members present were Assistant Commissioner Draper, Assistant Commissioner Nadon and Inspector Jensen. The notes indicate that Assistant Commissioner Draper spoke of the A.P.L.Q. The notes state, opposite the name of Mr. Lalonde: "full scale investigation or intervention regardless will be good for the goal — offensive rather than defensive". Some months after our hearings into this matter had ended and we had been satisfied that the public servant's evidence was not credible, the Privy Council office advised us that it had discovered a "Memorandum for File" which had not been stored with normal Cabinet documents. With it had been discovered handwritten notes by a Cabinet secretary. Both documents refer to the same meeting on September 10, 1973, and record the presence of the same persons, as did the notes produced from U.I.C. files. The cumulative effect of this documentation satisfies us that there was a meeting on September 10, 1973, and that it was this meeting about which the public servant had read.

137. Of course it does not follow necessarily, from the fact that there was a meeting attended by Cabinet Ministers, R.C.M.P. officers and U.I.C. officials in September 1973, that there was no such meeting in October 1972. It was because the latter did not follow irresistibly from the former that we held our hearings. The result of hearing the public servant testify was that we do not accept his evidence as accurate, not merely because there was the meeting in 1973 which was so similar to that which he claimed occurred in October 1972, but also because of the considerable inconsistencies in his own testimony and statements. By the time his testimony was completed, we had concluded that the allegation he had made to the R.C.M.P. officer, which resulted in our counsel and ourselves conducting an exhaustive inquiry into the matter, was completely unfounded.

138. Nevertheless, in case some witness who was said by the public servant to have been recorded as having been present at the meeting supposedly held in 1972 might indeed support the public servant's allegation, we heard the testimony of Mr. Starnes, Mr. Draper, the most senior U.I.C. official said to have been present, the U.I.C. official said to have been the author of the memorandum, and the Honourable Marc Lalonde. Mr. Starnes says that he knows nothing of the allegation; and, of course, if the only meeting was that held in September 1973, Mr. Starnes would know nothing of that meeting as by then he had left the Security Service. Mr. Draper testified that he remembered no such meeting in 1972 but that he did attend the meeting in 1973 and at that time discussed the A.P.L.Q. The U.I.C. official, Jean-Marc Legros, was said by the public servant to have been at the meeting in 1972 as Director of the Special Investigation Division of the U.I.C. He told us that he was given that title in September 1972, but that the Division was not organized until January or February 1973 and he was not really involved with the Division until then. Consequently, he says, it was impossible for him to have been at a meeting on the subject of frauds on the U.I.C. in September or October 1972. He does remember the meeting of September 1973. The man who the public servant said had been the author of the memorandum concerning the 1972 meeting was Robert Bambrick. He denies ever having been present at a meeting of Cabinet Ministers. He does recall Mr. Legros telling him of such a meeting in 1973, the purpose of which was to make the Ministers aware of the use of U.I.C. funds by certain subversive or activist groups. Mr. Lalonde told us that he certainly was at no meeting between the beginning of September 1972 and the end of November 1972 attended by the Prime Minister and representatives of the U.I.C. and R.C.M.P. concerning the A.P.L.Q. He also says that he has no memory of any such meeting before September 1972.

139. We also heard testimony by Mr. John G. Palmer, who has been a security officer with the Canada Employment and Immigration Commission since 1974. He told us that some time in the middle of 1977 the public servant told him that he had come across information that he, Mr. Palmer, assumed referred to a time preceding the A.P.L.Q. "event" in 1972, because the public servant told him that "the Honourable Marc Lalonde" had said, in relation to the A.P.L.Q. "Go after the (obscenity)". The public servant's former secretary also testified that in August 1977 the public servant told her that there had been a meeting of U.I.C. officials, R.C.M.P. and Ministers and that there had been a decision to follow through with a break-in at the A.P.L.Q. There is little doubt, then, that the public servant was fundamentally consistent in 1977 and 1980. That does not mean that his understanding of what he had read was consistently correct. Indeed, it should be noted that Mr. Palmer testified that the public servant told him that Mr. Dare had been one of the participants in the meeting. This is quite inconsistent with the public servant's testimony that, according to the document he read, Mr. Starnes had been present. Further, we note that Mr. Dare did not join the R.C.M.P. Security Service until 1973, and there is no reason known to us why he would have attended a meeting on that subject in 1972.

140. It was not until we were well into our hearings into this allegation that we learned that the essentials of this allegation had been published in an article in the *Sunday Sun* (Toronto) on October 7, 1979. We had believed that the allegation was not in the public domain, yet we had decided nonetheless to investigate it fully. The result of our investigation is that we find that the allegation is unfounded. We have reached that conclusion not so much by relying upon the evidence of such persons as Mr. Lalonde and Mr. Starnes, who might be thought to have reason to deny the allegation even if it were true, as by concluding that the evidence of the public servant is not to be accepted on the grounds we have stated.

141. Finally, we wish to record our regret that the R.C.M.P. did not bring this allegation to our attention. The allegation was known at a high level from September 1977. We realize that it was not taken seriously. Nevertheless, it should have been made known to us. If it had been, we could have investigated it by asking the public servant, who did not leave his position until 1979, to produce the document which in September 1977 he had claimed to have in his possession.

(ii) Were Ministers advised on September 10, 1973, that the R.C.M.P. had participated in a break-in at the A.P.L.Q. office?

142. In March 1981 the Privy Council Office advised us that it had discovered minutes of the meeting held on September 10, 1973, to which reference has been made in the previous section of this chapter, as well as "ancillary documents". The "ancillary documents" were, we discovered, handwritten notes by a member of the staff of the Privy Council Office at that meeting. We found that these notes recorded that Deputy Commissioner Nadon, who was then Deputy Commissioner (Criminal Operations), spoke of the R.C.M.P.'s investigations of frauds against the Unemployment Insurance Commission. The notes then recorded the following:

> Our crml fraud squad Mtl bring to early concln: will exam all evidc under Crim Code and UIC act: some areas dific: need records to carry out: some not available before Oct 72: (break & entry)
>
> — most info from delic sources:
>
> — cannot use for ct purps: must go out (in?) invest, maybe search cos, indivl will be some publicity

We interpret this as saying:

> Our commercial fraud squad Montreal bring to early conclusion: will examine all evidence under Criminal Code and Unemployment Insurance Commission Act : some areas difficult: need records to carry out: some not available before October 1972: (break and entry)
>
> — most information from delicate sources:
>
> — cannot use for court purposes: must go out (in?) [and] investigate maybe search companies [and] individuals will be some publicity

143. When we read this we realized that the notes might be construed as evidence that on September 10, 1973, Deputy Commissioner Nadon disclosed

to those at the meeting that in October 1972 the R.C.M.P. had taken the A.P.L.Q.'s records in a break and enter. We thereupon immediately instructed our counsel to review once more the files of the R.C.M.P., both on the criminal investigations and Security Service sides, to determine whether there was any documentation that might assist us in determining whether Mr. Nadon had made such a disclosure. If necessary we were prepared to call witnesses once again, even though Mr. Nadon had already testified that in 1973 he was unaware of Operation Bricole.

144. Upon his further review of R.C.M.P. files, our counsel did find two documents that support the conclusion that the C.I.B., in the weeks preceding the meeting of September 10, 1973, remained unaware that the R.C.M.P. had been involved in the break-in at the offices of the A.P.L.Q. Thus, on August 24, 1973, "C" Division in Montreal, in a message to Headquarters in Ottawa, advised of the creation of a task force consisting of R.C.M.P. and U.I.C. personnel, and then continued:

> Original information received from H.Q. gave us seven names of persons who were receiving benefits and who apparently were working at APLQ. We are restricted in historical research to no further back than the 7 Oct 72 the reason for this being that in the evening of the 6 to 7 Oct 72 a break-in occurred at the offices of the APLQ at which time all records and documents were allegedly stolen. Proof in court will require documentary evidence from APLQ and therefore prior to above date it is not available.

The message then gave information about seven individuals, based on U.I.C. data, and discussed the manner in which investigation might be undertaken, including searches at the offices of the A.P.L.Q. and of individuals. The second document consists of a typewritten statement entitled "Agence de Presse Libre du Québec (APLQ)". This quite obviously was the presentation made by Mr. Nadon to the meeting of September 10, 1973. This is demonstrated by its opening language and by the remarkable similarity between its contents and the notes made by the Privy Council Office staff member at the meeting. The document begins as follows:

> As a representative of the Criminal Operations side of the Royal Canadian Mounted Police, I wish to outline briefly for your benefit the nature of this Force's involvement in the investigation of Agence de Presse Libre du Québec, and its employees as it relates to certain irregularities associated with the obtention of U.I.C. benefits, the present standing of the investigation and our contemplated future course of action.
>
> Our involvement was dictated by an official request for investigative assistance, dated July 19th, 1973, from the Special Investigation Committee, of the Unemployment Insurance Commission.

It then gave information about the same seven individuals and about investigations under way concerning certain Local Initiative Projects in the Province of Quebec believed unrelated to the A.P.L.Q. The briefing document's striking similarity to the P.C.O. staff member's notes, quoted early, will be observed in the following excerpt:

> After consultations with our colleagues in the Unemployment Insurance Commission, we have established a "task force" in Montreal to cope

with this specific U.I.C. investigation. This force is composed of representatives from U.I.C. regional office in Montreal and members of our Commercial Fraud Section in that city. Objective, of course, is to work in unison with a view to bringing the investigation to an early successful conclusion. All transactions and allegations will be examined carefully both in terms of the provisions of the Criminal Code and U.I.C. Act.

I must clarify that our enquiry will be restricted, to a degree historically, in that the offices of A.P.L.Q. suffered a break-in during the night of October 6/7, 1972, resulting in the loss of accounting records. Documentary evidence is a must to establish any fraudulent obtention and we will therefore be restricted to the period following October 6th.

At this moment we are substantiating certain basic information in order to gain appropriate and adequate grounds for the obtention of search warrants under the Criminal Code. As you appreciate we cannot disclose our sources because of their delicate nature. We must support this evidence and information through other means. The acquisition of A.P.L.Q. accounting records is a must if we are to confirm or deny the allegations made.

145. From the contents of these documents it is plain to us that what was said by the R.C.M.P. at the meeting of September 10, 1973 was not in reference to the participation of the R.C.M.P. in the break-in in 1972. It was clearly in reference to a break-in which the C.I.B. and Mr. Nadon assumed was carried out by persons who were not members of the R.C.M.P. Because this is the inescapable conclusion on the basis of the documentation, we have decided that no testimony is required.

Comments of Commissioner Gilbert

146. I did not participate in the examination of the matters dealt with in the Postscript nor in the conclusions reached with respect to them. My reasons for not doing so are set out in a Record of Decision of the Commissioners dated September 9, 1980, which reads:

> Commissioner Gilbert advised his fellow Commissioners that after examining the summaries of the investigations carried out by Commission Counsel in connection with the allegations made by [name of the public servant] respecting Operation Bricole, he had decided that he would not participate further in deliberations or hearings or decisions of the Commission with respect to the matter. He said that he had arrived at this decision because of his friendship for Marc Lalonde whose conduct would be subject to examination during the course of further Commission investigations and hearings on the matter. The Chairman and Commissioner Rickerd advised Commissioner Gilbert that they understood the reasons for his decision and agreed with that decision. It was agreed that the Chairman would announce Commissioner Gilbert's decision at the first formal proceedings relating to the subject.

CHAPTER 5

AN ALLEGATION THAT AN ATTEMPT WAS MADE TO PREVENT FACTS FROM BEING DISCLOSED TO THE SOLICITOR GENERAL AND TO PERSUADE A MEMBER TO BE UNTRUTHFUL

INTRODUCTION

1. In this chapter we examine two events, separated by five months and distinct as to the issues they raise, yet related in terms of subject matter. The first consists of the circumstances in which Staff Sergeant Gilbert Albert, of the Security Service in Montreal, had conversations with former Staff Sergeant Donald R. McCleery on May 31 and June 1, 1977. The issues are whether Mr. Albert attempted on June 1 to persuade Mr. McCleery not to divulge facts to the Solicitor General's representative, whether Superintendent Henri Robichaud ordered Mr. Albert to do so, and whether Superintendent Robichaud received instructions from any of his superiors to do so. An incidental matter in regard to the meetings of May 31 and June 1 is whether Mr. Albert made written reports of those meetings earlier than the written statement he gave to Superintendent Nowlan's internal investigation on June 16, 1977.

2. The second event occurred on November 8, 1977, when Superintendent Archibald Barr, an Officer in Charge of the R.C.M.P.'s Task Force which was concerned with liaison between the R.C.M.P. and our Commission of Inquiry, met Staff Sergeant Albert in Ottawa. In regard to this occurrence, the first issue is whether Superintendent Barr ordered or asked Staff Sergeant Albert to change an account, which he had given in a statement in an internal inquiry in June 1977, of what Superintendent Robichaud had expected him to do vis-à-vis Mr. McCleery on June 1. The second issue is whether, if he did not order or ask Staff Sergeant Albert to do so, he nevertheless used words which, led Staff Sergeant Albert to believe that it would be best for him to do so, and whether that was intended by Superintendent Barr. The third issue is whether, if Superintendent Barr did order or ask Staff Sergeant Albert to do so, one or more of Superintendent Barr's superiors ordered or suggested to Superintendent Barr that he should try to get Staff Sergeant Albert to change his story. The fourth issue is whether Superintendent Barr carried out the expectations of the lawyers for the Government of Canada and this Commission who two days earlier had identified the facts, as stated in Mr. Albert's written statement of June 16, 1977, that they thought required clarification.

3. Public hearings were held by us concerning these matters on June 25 and 27, July 16 and September 8, 1980. That evidence appears in Vols. 189, 190, 191, 194 and 198. In response to notices given pursuant to section 13 of the Inquiries Act, representations by and on behalf of some of the persons involved, including further testimony by some of them, were heard by us in private on March 11, April 1 and 15, 1981 (Vols. C120, C128 and C131).

STATEMENT OF FACTS

4. On May 31, 1977, Staff Sergeant Gilbert Albert was a member of the Security Service, stationed in Montreal. He had been a member of the R.C.M.P. for 24 years. His immediate superior at that time was Inspector Ferraris. Superintendent Henri Robichaud was the Acting Area Commander of the Quebec Area Command of the Security Service.

5. Mr. McCleery had been dismissed from the R.C.M.P. in 1973, after 25 years of service. The stated reason for his dismissal was his failure to obey an order that he not associate socially with a particular individual who was a subject of concern to the R.C.M.P. Mr. Robichaud told us that some time after Mr. McCleery's dismissal, and many months before May 1977, on the instructions of the Commanding Officer of "C" Division of the R.C.M.P. he, Robichaud, had instructed all members of the Security Service in Montreal that they were not to associate with Mr. McCleery and if they did meet with Mr. McCleery and any questions were asked they were to report it. He said he does not remember whether the requirement was to report in writing (Vol. 190, pp. 27931-7). Mr. Albert told us that he had received those instructions, which were a formal order, and the members were told in those instructions that if they had a chance encounter or an arranged meeting with Mr. McCleery they were to report to their immediate superior or another superior officer (Vol. 191, pp. 28187-9). He said he had been advised even before that general meeting that he was forbidden to have any association with Mr. McCleery. Mr. Albert testified that after Mr. McCleery's dismissal he saw Mr. McCleery a maximum of 10 times and submitted reports in the majority of cases (Vol. 190, p. 28191). Messrs. McCleery and Albert were friends, and had worked together in Montreal from 1954 until Mr. McCleery's dismissal, except for two occasions when Mr. Albert was posted outside Montreal (Vol. 189, pp. 27723-4). Mr. Albert retired from the R.C.M.P. on July 4, 1978, and at the time of giving his testimony was an associate of Mr. McCleery in a private security agency.

May 31, 1977

6. On May 31, 1977, Mr. Robichaud learned from a source of the Security Service that Mr. McCleery intended to meet with the Solicitor General (Ex. M-112 for identification). Mr. Robichaud testified that he then asked Mr. Albert to arrange a meeting with Mr. McCleery but that this was not an order and that Mr. Albert could have declined but did not do so. Mr. Robichaud said that such a meeting would be attended by Mr. Albert in the exercise of his duty (Vol. 190, pp. 27938-9; Vol. 191, p. 28184). Mr. Albert testified that Mr.

Robichaud told him that he, Robichaud, had been informed by a source that Mr. McCleery intended to reveal to the Solicitor General certain things committed by the R.C.M.P., and that it was in the interest of the Security Service to get more information on that. Mr. Albert told us that he does not believe that Mr. Robichaud told him that there was a meeting planned with the Solicitor General (Vol. 191, pp. 28185-6). Mr. Robichaud testified that he does not believe that he informed Mr. Albert about Mr. McCleery planning to go to see the Solicitor General. In a memorandum prepared later that same day, May 31, 1977, Mr. Robichaud stated "...Albert was not aware of the information that McCleery was planning to see someone from the Solicitor General's office" (Ex. M-112 for identification).

7. Mr. Albert arranged a meeting with Mr. McCleery for lunch on May 31, 1977, and advised Mr. Robichaud accordingly (Vol. 191, p. 28187). As arranged, Mr. Albert met Mr. McCleery that day. Mr. Albert testified that he had not seen Mr. McCleery for a long time prior to May 31, 1977, because of the order not to see him (Vol. 198, p. 29221). He told us that the purpose of the meeting was to determine Mr. McCleery's intentions in view of his impending meeting with the Solicitor General. He said that it was Mr. McCleery who told him that he was going to see the Solicitor General and that he, McCleery, was going to advise the Solicitor General that he, the Solicitor General, was being lied to, as in Mr. McCleery's own case (Vol. 191, pp. 28192-3). He said that it was not Mr. McCleery's intention to divulge matters to the public, but only to the office of the Solicitor General (Vol. 191, pp. 28217-8). Mr. Albert told us that at the meeting he and Mr. McCleery talked about certain operations and that although Mr. McCleery did not say so he, Albert, concluded that Mr. McCleery intended to mention those operations to the Solicitor General or to the person whom he was going to meet (Vol. 191, p. 28194). Mr. Robichaud testified that after the meeting Mr. Albert reported to him verbally, that he, Robichaud, was satisfied with the verbal report, and, that Mr. Albert did not prepare a written report, although he acknowledged that the rule was to report if "they [the ex-members] asked for something" (Vol. 190, pp. 27932, 27937, 27942-3). According to Mr. Albert, he reported to Mr. Robichaud, and Mr. Albert believes that he submitted a written report which he believes he would have addressed to Mr. Ferraris (Vol. 191, pp. 28211, 28217). Mr. Robichaud could not recall whether reports about meetings with the ex-members were to be in writing (Vol. 190, p. 27937), but Mr. Albert testified that the rule was to report in writing (Vol. 191, p. 28228). Mr. Albert also said that he considered that in meeting with Mr. McCleery he was on duty, under orders (Vol. 191, p. 28213).

8. Mr. Robichaud testified that he arranged a meeting with Assistant Commissioner Sexsmith, the Deputy Director General (Operations) in Ottawa for approximately 7:00 p.m. on May 31, solely for the purpose of discussing Mr. Albert's meeting with Mr. McCleery. He travelled to Ottawa for the meeting and met with Mr. Sexsmith that evening as arranged (Vol. 190, pp. 27944-5). According to Mr. Sexsmith, it had been some time prior to May 31, 1977 that Mr. Robichaud first indicated to him that Mr. McCleery and Mr. Brunet, or one of them, were preparing to make allegations. Mr. Sexsmith said that he

had previous knowledge that Messrs. McCleery and Brunet were attempting to see the Solicitor General (Vol. 190, p. 28048). Mr. Sexsmith also testified that he assumes that Mr. McCleery had knowledge of such things as Cathedral (mail check operations) and surreptitious entries, and that he had a great deal of knowledge about operations of the Security Service generally. Mr. Sexsmith told us that he was concerned that Mr. McCleery would disclose such matters to the Solicitor General.

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

He added:

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

He told us that the reason he did not want the Solicitor General to become aware of the practices was because "it would put the Solicitor General in an impossible situation". He said that "as a Minister of the Crown" the Solicitor General could not "live with knowledge which indicated that an organization that he [the Solicitor General] was primarily responsible for was committing illegalities or improprieties or wrongdoings" (Vol. 190, pp. 28051, 28053-4, 28058, 28065).

9. Mr. Robichaud said that at the May 31 meeting with Mr. Sexsmith he, Robichaud, related to Mr. Sexsmith the report that Mr. Albert had given to him verbally (Vol. 190, p. 27945). According to Mr. Robichaud, Superintendent Nowlan was at the meeting, and those present concluded that the Security Service was in difficulty because of the nature of the allegations Mr. McCleery intended to make. Mr. Robichaud testified that he volunteered to get any other details or information he could from Mr. McCleery and that he indicated that he would ask Mr. Albert to see Mr. McCleery again and get more information. He said that Mr. Sexsmith and Mr. Nowlan did not veto that suggestion. He later told us that he does not recall specifically that he mentioned to Mr. Sexsmith and Mr. Nowlan that he would ask Mr. Albert to see Mr. McCleery again (Vol. 190, pp. 27949-60). However, in Mr. Barr's memorandum of November 8, 1977, he recorded that Mr. Robichaud, in discussing the matter with him that day, told him that, after receiving Mr. Albert's report on May 31 of his meeting that day with Mr. McCleery, Mr. Robichaud

> came to Ottawa that evening and spoke with the D.D.G. (Ops) [Mr. Sexsmith] and it was agreed that on the strength of information obtained up to that point that a second meeting should take place for the purpose of further clarifying these allegations and if possible determining McCleery's course of action. Supt. Robichaud said that it was never considered nor decided that we should in any way attempt to influence McCleery's course of action but that the purpose of the meetings was simply to gather information.

10. Mr. Robichaud told us that he was concerned that Mr. McCleery might take something to someone else besides the Solicitor General, and that his

concern on May 31, 1977, was that Mr. McCleery would make public the allegations that he was recounting to Mr. Albert as well as other operational matters he, McCleery, was aware of (Vol. 191, p. 28107). Mr. Robichaud acknowledged that from the time of Mr. McCleery's discharge in December 1973 until May 1977 Mr. McCleery had not, to his knowledge, disclosed any matters with respect to operations which could be compromising to the R.C.M.P. or the Security Service. He said that nothing concrete had happened during that time to justify the fear that Mr. McCleery would leak information to the news media such as that which he now intended to communicate to the Solicitor General (Vol. 191, pp. 28109, 28147-8; Vol. 190, p. 28026). Mr. Robichaud told us, that prior to Mr. McCleery's leaving the Security Service, Mr. McCleery had told him that he was going to destroy the Security Service. He said it was not a matter of concern to him to know what Mr. McCleery was going to tell the Solicitor General, but on the other hand, puzzlingly, Mr. Robichaud stated that he was interested in knowing what operations Mr. McCleery was going to bring up or in what form (Vol. 190, p. 28034).

11. Mr. Robichaud said that after the meeting with Messrs. Sexsmith and Nowlan he dictated a memorandum to file (M-112 for identification). He said he does not recall reading the memorandum and that he returned to Montreal without having a copy of it (Vol. 190, pp. 27946-7). He told us that it was his impression that the results of the investigation of everything in his memorandum would be brought to the attention of the Solicitor General if it were well founded. He also testified that he never showed that memorandum to Mr. Albert and that he does not recollect conveying to Mr. Albert the details of that memorandum to enable Mr. Albert to cross-check the accuracy of it (Vol. 191, pp. 28167, 28178).

12. Mr. Sexsmith testified, in regard to the meeting with Mr. Robichaud on May 31, that he cannot recall giving any instructions to Mr. Robichaud on how to handle the matter. He told us that he does not recall any specific discussion about Mr. Albert getting in touch with Mr. McCleery to try to get more information or specifically telling Mr. Robichaud that they would be interested in having more information. He agreed that he would "assume that Mr. Albert would be encouraged by Mr. Robichaud to pursue the matter and attempt to complete the information or gather more information" and that that would all be "in the line of duty". Mr. Sexsmith does not "think [he] would have to draw any pictures for Robichaud..." (Vol. 190, pp. 28084-7). However, a different version is reported by Mr. Barr in his memorandum dated November 8, 1977 (Ex. M-159). There he stated as follows:

> The D.D.G. (Ops) [Mr. Sexsmith], when asked for his recollections of his instructions to Supt. Robichaud on the evening of May 31st and specifically in relation to the second meeting with McCleery, stated that this meeting was agreed upon to solicit additional information on McCleery's allegations.

June 1, 1977

13. Mr. Robichaud returned to Montreal on the evening of May 31, 1977. On June 1, 1977, Mr. Albert was called to Mr. Robichaud's office and was, Mr.

Albert testified, asked to try to see Mr. McCleery again and obtain more information on Mr. McCleery's intentions about going to see the Solicitor General and at the same time to try to dissuade Mr. McCleery from divulging the facts that he knew. Mr. Albert acknowledged to us that it was also in his own personal interest not to have the facts divulged because he was implicated in certain of the operations of which Mr. McCleery knew. Mr. Albert testified that in the discussion he had with Mr. Robichaud the point was made that it was not only the R.C.M.P. itself, but also other individual members of the R.C.M.P., who would be involved. He told us that there was again a discussion that he should try to dissuade Mr. McCleery from communicating information to the Solicitor General; that the reason that he was to see Mr. McCleery the second time was to try to convince him not to divulge things that he knew to the Solicitor General; and, that he has no doubt that that was the reason for his meeting with Mr. Robichaud (Vol. 191, pp. 28218-21). According to Mr. Albert, at the time of his meeting with Mr. Robichaud he did not know that the latter had gone to Headquarters in Ottawa the previous evening to report on the first conversation Mr. Albert had had with Mr. McCleery. Later, Mr. Albert told us that when Mr. Robichaud called him into his office on June 1, 1977, the reason that he was to go back to see Mr. McCleery was not to obtain further or additional information because they had already obtained the information on May 31, 1977. He said that his recollection is that he was not directly ordered as such — that is, not given a written order — to persuade Mr. McCleery not to divulge the information to the Solicitor General, but as he understood it that was understood by himself and Mr. Robichaud to be the reason for his going to see Mr. McCleery a second time (Vol. 198, pp. 29222-4). Mr. Albert also told us later that he personally had nothing to gain or lose in trying to convince Mr. McCleery not to talk to the Solicitor General (Vol. 198, p. 29231).

14. We turn now to Mr. Robichaud's account of what occurred at the meeting between himself and Mr. Albert on June 1: He asked Mr. Albert to meet again with Mr. McCleery. He imagines that they had a discussion as to what information Mr. Albert should seek but he cannot recollect it. To the best of his recollection he asked Mr. Albert to find out if there were any other incidents that Mr. McCleery was going to expose but he did not give Mr. Albert "an indication that he was to talk to Mr. McCleery in such a way as to try to dissuade him from seeing the Minister or representatives" of the Minister. He does not recall having instructed Mr. Albert, or having indicated in any way to him, that he should attempt to dissuade Mr. McCleery from talking to representatives of the Solicitor General (Vol. 190, pp. 27961-2). (Later, more positively, Mr. Robichaud said that he "most certainly did not instruct him to prevent McCleery from going to the Minister", p. 28022.) Whatever information he obtained through sending Mr. Albert to talk to Mr. McCleery he intended to give to Mr. Sexsmith, but he had no idea what Mr. Sexsmith would do with it (Vol. 190, pp. 28022-36). In meeting with Mr. McCleery on June 1, Mr. Albert was acting in the line of duty. In order to have the meetings of May 31, and June 1, with Mr. McCleery, Mr. Albert had to be authorized by him to attend such meetings (Vol. 190, pp. 27954, 27961-2, 28022).

15. On June 1, Mr. Albert phoned Mr. McCleery and arranged a tennis match for that day, and they accordingly played the tennis match and had lunch together. Mr. Albert recorded his expenses for the tennis match and the lunch in his diary and thinks that he must have been reimbursed by the Security Service (Vol. 191, pp. 28222-3). At that meeting of June 1, 1977, he told us, he tried to convince Mr. McCleery not to go to Ottawa. He testified that he has no precise recollection whether the incidents mentioned the previous day were discussed again but they may have been. He told us he would very much have liked to have succeeded in convincing Mr. McCleery not to go to see the Solicitor General and that following the meeting he wrote in his diary "meeting not too encouraging" (Vol. 191, pp. 28224-5). Mr. Albert testified that at the first meeting, on May 31, the purpose had been to try to find out what revelations Mr. McCleery intended to make to the Solicitor General or his officials, and his intention at the June 1 meeting was to dissuade Mr. McCleery (Vol. 191, p. 28280).

16. Mr. McCleery testified that at the June 1 meeting with Mr. Albert there is no doubt he discussed his proposed visit to the Solicitor General's office, and that Mr. Albert was probably trying to dissuade him from going. However, Mr. McCleery noted that Mr. Albert had been doing that ever since he, McCleery, had been discharged. He told us that every time he tried to take his case to Federal Court, Mr. Albert would ask him why he wanted to do that because everybody knew that Mr. McCleery had not done anything. According to Mr. McCleery, Mr. Albert's recurring theme was "What do you want to push this thing for?", and the same theme was present at the June 1 meeting. At the meetings of May 31 and June 1 Mr. McCleery did not have the impression that Mr. Albert was pressing him to drop his going to Ottawa any more than he always did (Vol. 189, pp. 27729-32). Mr. McCleery stated that he does not recall telling Mr. Albert at those meetings examples of things that he might possibly use to substantiate his concern about the Minister being lied to. He told us that he does recall reminiscing at lunch with Mr. Albert and laughing about the A.P.L.Q. being an isolated case, and that each of them was recalling things that he knew about matters about which no one [else] knew anything (Vol. 189, pp. 27734-6). He testified that Mr. Albert did not tell him not to go and talk to Mr. Tassé or not to go and talk to someone in Ottawa, and that Mr. Albert's position was just generally "drop your — trying to get reinstated". According to Mr. McCleery, Mr. Albert did not say that like an official representative of the Force, and he always presumed that Mr. Albert was speaking on his own behalf (Vol. 189, pp. 27788-9).

17. Mr. Sexsmith testified that the Security Service did not mean to prevent Mr. McCleery from seeing the Solicitor General and from telling him whatever he was going to tell him. Mr. Sexsmith stated that he was aware that Mr. Albert was personally concerned about what Mr. McCleery was going to do but that he is not aware of any efforts by anybody after May 31, 1977, to change Mr. McCleery's direction (Vol. 190, pp. 28055, 28090). He told us that he does not think that he "was ever under any illusion that [Mr. McCleery] would not pursue his stated aim" of meeting the Minister (Vol. 190, p. 28091).

Reports by Mr. Albert

18. Mr. Albert testified that he is positive that he had made a written statement to Mr. Robichaud in relation to the meetings of May 31 and June 1 (Vol. 190, p. 27917). He also said that he made a written report which he believes he would have addressed to Mr. Ferraris (Vol. 191, p. 28217). He told us that he does not think that these meetings were exceptions to what he understood was the rule requiring written reports of such meetings (Vol. 191, p. 28228).

19. Mr. Robichaud testified that he presumes that Mr. Albert reported (verbally) to him after the June 1 meeting and that he imagines that he conveyed the information received to Ottawa and the fact that Mr. Albert had had a second meeting with Mr. McCleery (Vol. 190, pp. 27978-80). He told us that he did not receive a written report from Mr. Albert with respect to the June 1 meeting, nor a report at a later date of the May 31 meeting, nor did he receive a memorandum from Mr. Albert relating to his meetings with Mr. McCleery. He said it was the usual practice that when someone was sent out on a mission he would report in writing and file some information, but that he may have told Mr. Albert not to bother to file a written report because he, Robichaud, had all the facts. He said, however, that he does not recollect the line of discussion. He said he would be surprised if Mr. Albert had made a written report to some other officer without advising him and that he is not aware of any other written report. We have not seen any written report by Mr. Albert; the R.C.M.P. have advised us that they have not found any such reports.

20. At the beginning of June Superintendent Nowlan was instructed by Commissioner Nadon to conduct an internal investigation into the allegations being made by Mr. McCleery. In the course of this investigation, he called in Mr. Albert on June 16. Mr. Albert testified that at Mr. Nowlan's request he prepared a written report concerning his meetings with Mr. McCleery. He said he retained a copy of that report (Vol. 191, pp. 28233-6; Ex. M-158). He said that he believes that when he made the June 16 report he referred to the two reports which he asserts he had earlier given in writing. He further said that his memory may be wrong but he believes when he made the June 16 report he was aided by two reports that he had already made (Vol. 191, pp. 28238-9). In the statement he gave Mr. Nowlan, Mr. Albert stated as follows:

> 5. My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on Jules Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against Terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind.

November 8, 1977

21. Supt. Barr joined the R.C.M.P. in 1953 and has served in the Security Service since 1955. Upon the creation of this Commission of Inquiry in July

1977, he was appointed to head the Security Service component of the R.C.M.P. Task Force set up to liaise with us and our staff. That Task Force also had a C.I.B. component. The Co-ordinator of the Task Force in 1977 was Assistant Commissioner Quintal who, in that position, represented the Commissioner's office. Superintendent Barr served as Head of the Security Service Task Force until November 1978.

22. Mr. Barr testified that on November 6, 1977, he was called to a meeting at R.C.M.P. Headquarters at which those present were Mr. Quintal, Superintendent D.K. Wilson (also of the Task Force), and Mr. Nuss and Mr. Lutfy (government counsel) and Mr. Howard (Chief counsel for the Commission). Mr. Barr told us that it was at that meeting that he first directed his attention to Mr. Albert's statement of June 16, 1977 (Ex. M-158), which had formed part of the "Quintal-Nowlan Report", produced during the summer as a result of the internal investigation. At the meeting concern was raised, probably by Mr. Nuss or perhaps by Mr. Lutfy, particularly about the contents of paragraph 5 of the statement (quoted above). The concern that was expressed, according to Mr. Barr, was that, if paragraph 5 remained as it was, it implied an obstruction of justice in the spring of 1977 (Vol. 194, pp. 28497-9). Mr. Barr told us that the part of the paragraph especially singled out as being of concern was "... the part that suggests that the reason for this meeting of which Supt. Robichaud was aware was to convince Mr. McCleery not to pursue his intention to divulge whatever he knew". He said that it was agreed that "we would approach the individuals involved and determine whether or not the reading of that paragraph as it came through was the way it appeared to be" (Vol. 194, p. 28501). He said he came away from the November 6 meeting with a consensus as to what had to be done and it was then necessary to confirm that through the Director General of the Security Service, Mr. Dare. Mr. Barr testified that he was then given instructions to approach the individuals involved and solicit their comments and to report on it, and that he probably received those instructions as a result of a discussion between Mr. Quintal and Mr. Dare, based on his briefing of Mr. Dare as to what the issue was. However, he is not sure what discussions Mr. Dare had with either Mr. Quintal or the Commissioner's office, if at all. He told us that he thought his instructions came from Mr. Dare (Vol. 194, pp. 28503-7).

23. The lawyers who were present at the meeting of November 6 have agreed on the following statement:

> On November 1st, 1977, Joseph R. Nuss, Q.C. and Allan Lutfy, both counsel to the Solicitor General, in the presence of then Assistant Commissioner Raymond Quintal, had seen, among other documents, the document which is now Exhibit M-158.
>
> On November 5, 1977, Messrs. Nuss and Lutfy, when they were going through the Quintal-Nowlan Report at RCMP Headquarters in Ottawa, noted that Tab 46 (now Exhibit M-158) contained the following text:
>
> "My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on July Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery

not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind."

Messrs. Nuss and Lutfy became interested in that text since it seemed to indicate a possible attempt a) to prevent the representative of the Solicitor General from learning certain allegations and b) to persuade McCleery not to divulge criminal acts. They drew the attention of Assistant Commissioner R. Quintal to this document on the same day and indicated that they intended to raise this question with J.F. Howard, Q.C., Chief Counsel to the Commission.

This was done at a meeting held on the next day, November 6, which was attended by J.R. Nuss, Q.C., A. Lutfy, J.F. Howard, Q.C., Assistant Commissioner R. Quintal, Superintendent D.K. Wilson and Superintendent A.M. Barr.

During the discussion, the RCMP expressed a desire to clarify this question through an interview with Staff Sergeant J.L.G. Albert and Superintendent H. Robichaud. J.F. Howard, Q.C. accepted this suggestion provided that the result be communicated to him. J.R. Nuss, Q.C. and A. Lutfy agreed to this manner of proceeding.

At no time during the discussion of November 5 between J.R. Nuss, Q.C., A. Lutfy and Assistant Commissioner R. Quintal, nor during the meeting of November 6, was there any question of other declarations or reports by or from Albert other than M-158.

(Ex. UC-84.)

24. Mr. Barr explained to us how he viewed the task he carried away from the meeting of November 6, as follows. He was given the responsibility of interviewing three people about a paragraph in a single statement and seeking clarification of that paragraph, and that this is what he did (Vol. 194, p. 28545). His notes with respect to that meeting state "Annex 46, paragraph 5, check who knew about approach to McCleery", and written beside it is "okay" and underneath entered later is "memo written 8-11". The memo referred to is his memorandum of November 8, 1977 (Ex. M-159; Vol. 194, p. 28568). As he recalls it "the approach to be followed from the 6th of November was (a) check who knew about the approach to McCleery, but also that the responsibility of interviewing these people would be left to us in the Task Force as opposed to establishing an investigation" (Vol. 194, p. 28569). It seemed to him, knowing how the system operates, and having experienced it in other quarters, that a discussion would have taken place between himself and Mr. Quintal to the effect that there was a problem and how they were to deal with it; that the two options were to conduct a formal investigation which was liable to get them nowhere or to try the route that they did which was for the Task Force to get the information by talking to the Security Service people (Vol. 194, pp. 28625-6). It had been agreed upon as policy that the Task Force were not investigators, they were researchers and that the reason for that was that, while the Task Force were doing their utmost to uncover the material that related to the issues the Commission would look at, it was clear to them that if

they were seen by members of the Security Service as investigators or an inquisitorial body people would simply not talk to them (Vol. 194, p. 28502). He was not acting as an investigator. The information could have provided the basis for an investigation had it been decided to do so (Vol. 194, p. 28627). The Task Force were under very firm instructions that if, in any discussions with anyone in the course of their research, they came across anything that had the slightest hint of criminality they were to cease their discussions and their research and turn the matter over to Mr. Quintal, who would then order an investigator to go in and take a statement. As he understood his assignment, it was to get the comments of the individuals involved in the framework of the research approach, putting down comments as accurately as he could and submitting them to senior management in order that a further decision could be taken on how to proceed. That is what he did (Vol. 194, p. 28503). He spoke to the three persons involved, recorded as accurately as he could their observations on the particular paragraph and submitted it to the Director General (Vol. 194, p. 28512).

25. On Monday, November 7, Mr. Barr telephoned Mr. Robichaud in Montreal and asked him to come to Ottawa and to bring Mr. Albert with him. Mr. Robichaud phoned Mr. Albert at home on the evening of November 7, but he was not at home at the time. Mr. Albert returned the call that same evening, at which time Mr. Robichaud told him that he had to go to Ottawa the next day and that he should meet Mr. Robichaud at a shopping centre in Montreal at 6:30 the following morning. Mr. Albert testified that Mr. Robichaud did not tell him why he had to go to Ottawa and he had no idea why he was going. However, Mr. Robichaud told us that he told Mr. Albert that he had to go to Ottawa because Mr. Barr had asked. Mr. Robichaud testified that Mr. Barr told him in the telephone conversation that the purpose of the meeting was to clear up some discrepancy, but that Mr. Barr did not seem to want to discuss it and just asked whether he could be in Ottawa and bring Mr. Albert with him (Vol. 190, pp. 27999-28000; Vol. 191, p. 28242). Mr. Barr said that he does not think he indicated to Mr. Robichaud why he wanted to see him and Mr. Albert and that he thinks they were just told that at Headquarters they wanted to talk to them about something which was going on in the Task Force (Vol. 194, pp. 28513-4). Mr. Barr said that there was no doubt anywhere that this was something that had to be resolved rather quickly and that that would be the basis upon which it was put to Mr. Robichaud (Vol. 194, p. 28515).

26. Mr. Robichaud met Mr. Albert the next morning as arranged, and they drove to Ottawa. Mr. Albert testified that he was not told why they had been summoned to Headquarters (Vol. 191, p. 28279).

27. Mr. Barr testified that in preparation for the meetings he did not obtain any other document, report, statement or note in relation to the meetings between Mr. Albert and Mr. Robichaud and that "to [his] knowledge" Mr. Sexsmith did not give him a background explanation as to why the meeting had occurred and why it had taken place on June 1 (Vol. 194, p. 28517). Mr. Barr told us that he does not recall, before Mr. Robichaud arrived, having obtained from Mr. Robichaud or from anybody else information in relation to the

meetings that Mr. Albert had with Mr. McCleery, and that he undertook no preparation for the meetings with the people involved other than by getting a copy of the June 16 statement (Vol. 194, pp. 28518-9). He said that he has no recollection of having seen the memo for file dated May 31, 1977, prepared by Mr. Robichaud (Ex. M-112 for identification) and that the information in that memo was not given to him before or at the meeting of November 8, 1977 (Vol. 194, pp. 28522-3).

28. Mr. Barr testified that his recollection is that on November 8, he first spoke to Mr. Robichaud while Mr. Albert waited outside and he then spoke to Mr. Albert after Mr. Robichaud had left. Mr. Robichaud said he does not recall having been present when questions were asked of Mr. Albert and that he cannot recall whether Mr. Albert was present when Mr. Barr asked questions of him, Mr. Robichaud (Vol. 194, p. 28525; Vol. 190, p. 28004). Mr. Albert said that he and Mr. Robichaud went to Mr. Barr's office, they talked for several minutes, Mr. Barr explained to them what it was about, Mr. Robichaud withdrew, and he stayed with Mr. Barr at which time Mr. Barr questioned him (Vol. 191, p. 28246).

29. We turn now to what Mr. Robichaud told Mr. Barr that November 8. According to Mr. Barr, Mr. Robichaud said to him in effect, "I did not order him to go see McCleery to get him to keep his mouth shut" but Mr. Robichaud acknowledged that Mr. Albert may have understood him to have said that. In other words, Mr. Barr testified that Mr. Robichaud, although quite clear in his own mind as to whether he had given an order to Mr. Albert to go see Mr. McCleery to get him to keep his mouth shut, felt that Mr. Albert may have his own recollection of that (Vol. 198, pp. 29081-84). Mr. Barr told us that he cannot recall whether Mr. Robichaud indicated to him, on November 8, that Mr. Albert had tried to persuade Mr. McCleery not to go to see the Solicitor General at the time that he met with him the second time (Vol. 198, p. 29100).

30. Mr. Albert's testimony as to what occurred between him and Mr. Barr is as follows: The meeting lasted from three-quarters of an hour to one hour (Vol. 191, p. 28286). Mr. Barr told him that they had received legal advice or a legal opinion from the Solicitor General's office or the Justice Minister, he does not know which one, "to the effect that if his statement were to remain exactly the way he had written it the Force would be subject to legal action or criminal action for intervening with the law or something like that" (Vol. 191, pp. 28249-50).

> Q. Once he had made that comment did he request you to do anything?.
>
> A. Well he asked of me to change that paragraph, and he asked my permission whether I would agree to change it and I said yes.
>
> (Vol. 191, p. 28250.)

And again:

> I was asked to change the report. [our translation]
>
> (Vol. 191, p. 28272.)

He did not have a gun pointed at his head when the request was made and he was free to do it or not. When he was asked and it was explained to him, he was agreeable to the change, to avoid problems. He was not forced and his arm

was not twisted to get him to do it. He felt it was logical or reasonable in the context of the times to avoid even more problems than those they already had (Vol. 191, pp. 28249-51). Mr. Barr did not influence him in any way nor did he try to persuade him by threats or in any other way. Mr. Barr took the trouble, however, to explain to him the problems which would be caused to the R.C.M.P. if his statement remained as it was and he read between the lines what Mr. Barr was saying to him (Vol. 198, pp. 29245-6). He felt he was caught between his duty to tell the truth and his duty to be loyal to the Force and he opted for loyalty to the Force (Vol. 191, p. 28258). He is not sure which report he was asked to change, whether that of May 31, June 1, or June 16 and he was not shown the date. There were several reports that he had submitted where he mentioned having received an order from Mr. Robichaud to meet Mr. McCleery and convince him not to divulge the facts that he knew (Vol. 191, pp. 28271). Mr. Albert said that he thought that it was the statement that he had given after the June 1 meeting with Mr. McCleery that was discussed with Mr. Barr, but that he has been told that it was the June 16 statement and he accepts that (Vol. 198, p. 29247). He was asked to change a report and then there was another paragraph which was added to the effect that he told Mr. Barr that he considered Mr. McCleery a friend and that as far as he was concerned Mr. McCleery was an honest man (Vol. 191, p. 28272). Mr. Barr told him that he was going to re-do the statement and would recall him. Then Mr. Albert went to the Security Service offices in the Headquarters building. Mr. Barr called him later in the afternoon and indicated to him the statement that he should sign. Mr. Barr read the statement but Mr. Albert himself did not read it. He signed it at the bottom and left. Mr. Barr dictated the correction to his secretary, in front of Mr. Albert (so Mr. Albert believes), and that he was called back and shown the text and the corrections were read to him. He said that it was a three-page report and that he read in the report the paragraph concerning the fact that he was a friend of Mr. McCleery and considered him an honest man and that he saw that before signing (Vol. 191, pp. 28272-5). (Here we pause to note that no such signed report has been produced by the R.C.M.P., and that what the R.C.M.P. did produce was Superintendent Barr's memorandum (Ex. M-159), which consists of two pages, the second of which, we observe, was typed on a different typewriter than the first page.) Mr. Albert's conscience was not troubled by the request to change his report. The R.C.M.P. sensed that it was in difficulty and he felt an obligation or duty to change the report. When he was told that the R.C.M.P. was in difficulty he believed it was his duty to see things differently and therefore he changed his declaration voluntarily without anyone, including Mr. Barr, influencing him in any way or putting words in his mouth. He did it voluntarily, believing sincerely that he could help the R.C.M.P., and also at the same time, by changing the declaration, it would rid the Force of some problems. His loyalty to the Force superseded his personal interests, as far as he was concerned, but as he did not have any interest in saying one thing or another, there was no conflict of interest between him and the R.C.M.P. (Vol. 191, pp. 28277-8, 28329-30).

31. Mr. Albert testified that paragraph 5 of his statement of June 16, 1977 (Ex. M-158) where he said, "... the reason for this meeting, of which Supt.

Robichaud was aware, was to convince Mr. McCleery not to pursue his intention to divulge whatever he knew of various incidents" meant that Mr. Robichaud was aware of both the meeting and of the reason for the meeting. He told us that the contents of paragraph 5 were true and that the version in Mr. Barr's memorandum (Ex. M-159) at page 2, where it is said that Mr. Albert went to see Mr. McCleery on June 1 to try to get additional information on what he was going to tell the Solicitor General, is not true. He said that Ex. M-159 is false (Vol. 198, pp. 29220, 29234, 29237). He told us that he does not recall whether the document that Mr. Barr read to him was Ex. M-159, and that he thought the document he signed had three pages while M-159 has only two, but he acknowledged that the document could be M-159 (Vol. 198, pp. 29242-3).

32. Mr. Barr's evidence as to what transpired is as follows: He has no way of knowing whether Mr. Robichaud knew in advance or had some expectation as to why he had been called to Ottawa and his recollection is that he had explained it to Mr. Robichaud. Once Mr. Robichaud knew what the issue was he was quite aware of why the concern was there and was quite intense about the matter and his desire to see it resolved (Vol. 194, pp. 28525-32). Mr. Robichaud did not explain to him that he had had a meeting on May 31, nor can he remember Mr. Robichaud having said that he could complete the issue by giving him documents like the memo of May 31, 1977, or any other document (Vol. 194, p. 28537). He did not offer Mr. Robichaud the opportunity of reading what he, Barr, wrote and Mr. Robichaud laid out how he felt about the issue and that was it (Vol. 194, p. 28536). He did not show Mr. Robichaud his memorandum afterward. He does not think that Mr. Albert knew what the purpose of the meeting was and for that reason he thinks Mr. Albert was "somewhat nervous". He pointed out to Mr. Albert the statement that was of concern, indicated to him that, on the basis of the statement in its then existing form, concern had been expressed by government lawyers that "there had been a tampering with the process of justice". He thought that Mr. Albert realized that "if the statement stood" Mr. Robichaud was involved, and that Mr. Albert was "very upset". He told Mr. Albert that he had been asked to speak to him to seek clarification of what he meant when he wrote the particular sentence or sentences. He indicated to Mr. Albert there was concern about the paragraph and asked him whether "the meaning that appeared to jump out at those who read it" was what he, Albert, "was trying to get across", and, "if not, what was his meaning" (Vol. 194, pp. 28552-8, 28572). Mr. Albert was "very tense" and "very troubled" because, in Mr. Barr's perception, Mr. Albert was a man who was in the midst of a very real human dilemma; and it was a dilemma that came about as a result of a conflict between his responsibility to an organization he was employed with, and an obligation of a personal friendship of some twenty-four years. Mr. Albert opened up the dilemma quite clearly to him and he, Mr. Barr, made it quite clear to Mr. Albert that he would endeavour to articulate as clearly as he could in the memo that he had to prepare the position that Mr. Albert found himself in

> such a way that there would be no obscurity, there would be no misunderstanding about his motives; and that hopefully, he could go away feeling a

little better; that, at least, the record was straight on his dealings with Don McCleery and his personal relationship with him.

He did not at any time use words that could lead Mr. Albert to understand that he wanted Mr. Albert to change his statement. He did not indicate to Mr. Albert that there was a complete change of his statement by the words "he was not given an order to attempt to influence McCleery's course of action, but was asked to meet with him to gain additional information or allegations". The memorandum that Mr. Barr wrote was an "attempt to clarify the meaning of paragraph 5, not to change paragraph 5". Had the statement been changed then his understanding of the procedure would have been that someone would have taken a new statement from Mr. Albert. He did not and "to [his] knowledge" no one else did and therefore he did not regard Mr. Albert's statement as having been "changed" (Vol. 194, pp. 28605-6). Mr. Albert, having "become aware of the implications of what he had written", then "went on to elaborate what he really meant", and "it came out that it was really the meeting he [Robichaud] was aware of" (Vol. 198, pp. 29098-9) — in other words, he was not aware of "the reason" for the meeting. The question of the state of knowledge of Mr. Robichaud was not discussed with Mr. Albert on November 8, and the only question that was discussed with Mr. Albert was whether Mr. Robichaud had given him an order. In an attempt to make sure that the process was as fair as it could be, and because his English was better than Mr. Albert's, he agreed to draft a paragraph which he hoped would "encapsulate" Mr. Albert's concerns in such a way that Mr. Albert would feel comfortable that they were recorded. He invited Mr. Albert back to his office to see that this was done and to let him see what was going on the record. For that reason, when a paragraph was drafted, Mr. Albert came back and read it. He has no recollection of Mr. Albert having signed it nor of having asked him to sign it. He just showed Mr. Albert paragraph number 4 on page 2 of Ex. M-159 (Vol. 194, pp. 28573-7). He asked Mr. Albert if he wanted to explain what he really meant by the words used in paragraph 5 of Ex. M-158, and paragraph 4 of his report (Ex. M-159) is Mr. Albert's explanation, as given to him by Mr. Albert. Mr. Albert was not before him under duress and

> There was certainly no request from me, or intention on my part, for Mr. Albert to change his statement.
>
> (Vol. 194, p. 28581.)

Mr. Barr could not answer with any accuracy whether Mr. Albert indicated to him that he had been ordered to see Mr. McCleery on a couple of occasions and that this occasion was one of them, nor does Mr. Barr know whether they discussed whether Mr. Albert had gone to see Mr. McCleery at Mr. Robichaud's request (Vol. 194, p. 28578). He does not believe Mr. Albert said he made a mistake. He thinks Mr. Albert's "feeling was that perhaps because of the language, there was a misunderstanding, and a misinterpretation of what he [Albert] meant, and that one could only understand what he meant, if he was able to unfold [the] feelings" that he, Mr. Barr, had earlier described to us (Vol. 194, p. 28579). He does not recall Mr. Albert telling him that documents had been filed with his superiors or that he had documents back in Montreal. No documents were produced or discussed other than paragraph 5 of the June

16 statement (Vol. 194, pp. 28559-60). To Mr. Barr's recollection, Mr. Albert did not request any changes, corrections or additions and he thinks that he was quite pleased with paragraph 4 of Ex. M-159. Mr. Barr did not ask Mr. Albert to sign the memorandum. The contents of the paragraph were somewhat of a relief to Mr. Albert and Mr. Albert was rather pleased to see that it had come out the way it had and therefore there was no question of asking him to initial a draft or anything else (Vol. 194, pp. 28598-28602).

33. Mr. Barr said that his recollection is that as soon as Mr. Albert left his office he dictated paragraphs one, two, three and four of his memo (Ex. M-159) and he then went up and saw Mr. Sexsmith and paragraph five was added after he saw Mr. Sexsmith. He said that pages one and two of his memorandum appear to have been typed with two different typewriters and he has no explanation for that fact (Vol. 194, pp. 28585(b), 28603-4).

34. Mr. Barr testified that Mr. Sexsmith became aware that he, Mr. Barr, was going to look into paragraph 5 of Mr. Albert's statement either because he, Barr, told him or because the Director General told him, or both. He told us that the question of who should be talked to would have been something discussed between himself, Mr. Quintal and Mr. Dare probably the morning of November 7. He said that it was well known within the Task Force that anything dealing with the relationship that existed between Messrs. Albert and McCleery involved two key people, Messrs. Robichaud and Sexsmith, and that if you were "going to look at who could have been involved in the conspiracy to direct or suppress the comments of Mr. McCleery, it had to include Henry Robichaud and Murray Sexsmith" (Vol. 198, pp. 29041-7). He said that when he met with Mr. Sexsmith, Mr. Sexsmith knew full well what the issue was (Vol. 194, p. 28590). He said that Mr. Sexsmith was greatly concerned by what the paragraph suggested.

35. Mr. Barr testified that he did not discuss with Mr. Robichaud, or Mr. Sexsmith, or Mr. Albert whether Mr. Robichaud was aware that Mr. Albert intended to try to persuade Mr. McCleery, for whatever reason, not to go to the Solicitor General. As far as Mr. Barr was concerned, that was not the issue — the issue was whether or not Mr. Albert was ordered to do so (Vol. 198, p. 29205). He said that anything that Mr. Albert did on his own initiative causing a potential legal problem would have to have been dealt with by the investigative side or the "Quintal side" of the Brunet/McCleery investigations (Vol. 198, p. 29179).

CONCLUSIONS

The meeting between Superintendent Robichaud and Staff Sergeant Albert on June 1, 1977

36. We conclude that Superintendent Robichaud did not actually order Staff Sergeant Albert to try to dissuade Mr. McCleery from divulging facts to the representatives of the Solicitor General. Mr. Albert himself did not claim that any such order had been given. However, we accept Mr. Albert's evidence, which was not denied by Superintendent Robichaud, that the two men did

discuss the undesirability of Mr. McCleery divulging facts to the Solicitor General's representatives. We think that when, fifteen days later, Mr. Albert gave his written statement, his memory of what had occurred was fresh and he had no reason to misstate the facts. What he said in that statement was, we think, without ambiguity; we think that the words "The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew..." meant not only that Superintendent Robichaud was aware of the meeting but also that he was aware that Mr. Albert intended to try to dissuade Mr. McCleery. Mr. Robichaud did not have to give Mr. Albert an order to try to dissuade Mr. McCleery. Mr. Albert could reasonably draw an inference, from the request that he see Mr. McCleery again, and the discussion about the undesirability of Mr. McCleery divulging facts, that Superintendent Robichaud would not be displeased if Mr. Albert were to be successful in dissuading Mr. McCleery. We think that it was unacceptable that Mr. Robichaud permitted Mr. Albert to go off to meet Mr. McCleery again, knowing that Mr. Albert intended to try to dissuade Mr. McCleery, without instructing him that he was not to make such an attempt. His failure to give such instructions cannot be distinguished in its effect from giving an order to Mr. Albert to try to dissuade Mr. McCleery.

37. Did Mr. Sexsmith have anything to do with what Mr. Robichaud did? We think that it is plain from Mr. Sexsmith's own candid evidence that when he met Mr. Robichaud on the evening of May 31 the concern was not with the possibility that Mr. McCleery would go to the press, nor with getting more details about what Mr. McCleery might divulge to the Solicitor General's representatives, but with whether Mr. McCleery might still not divulge any facts to them. While Mr. Sexsmith did deny to us that he and others had "meant to somehow prevent McCleery from seeing the Solicitor General and prevent McCleery from telling him whatever he was going to tell him" (Vol. 190, p. 28055), we are satisfied, on the basis of Mr. Robichaud's evidence, that on the evening of May 31 he and Mr. Sexsmith did discuss having Mr. Albert go back to see Mr. McCleery a second time, and that Mr. Sexsmith at least went along with that plan. Mr. Sexsmith's own memory of that meeting, as testified to by him, is, at best, slight, and his denial lacks persuasiveness in consequence. Mr. Sexsmith admits that he

> was aware that Albert was personally concerned about what McCleery was going to do.
>
> (Vol. 190, p. 28090.)

We conclude, on a balance of probabilities, that, knowing that Mr. Albert wanted to dissuade Mr. McCleery, Mr. Robichaud and Mr. Sexsmith discussed the matter and decided to send Mr. Albert to see Mr. McCleery a second time, knowing full well that, unless forbidden to do so, Mr. Albert would attempt to dissuade Mr. McCleery.

38. We consider that it was unacceptable for Mr. Albert to attempt to dissuade Mr. McCleery from divulging facts to the Solicitor General, and for Mr. Robichaud and Mr. Sexsmith, in effect, to give him tacit encouragement to do so. If a former member of the R.C.M.P. believes that he has information about the R.C.M.P., of which the Solicitor General should be made aware, it is

undesirable for members of the R.C.M.P. to attempt to discourage or prevent him from doing so.

39. We do not conclude that it is a fact that Mr. Albert prepared written reports of his meetings of May 31 and June 1 with Mr. McCleery. While Mr. Albert expressed himself as being "positive" that he did so in regard to those meetings, our impression of his evidence as a whole is that he is reconstructing his memory based on what he says was the rule that written reports of meetings with the ex-members were to be submitted. He does not say that these cases were no exception to that rule. He says only that he does not "think" that they were exceptions to the rule, and that he "believes" that when he prepared his written report on June 16 he used the two earlier reports as references — "That is the idea I have of it", he said (Vol. 191, p. 28238). We think that this evidence is insufficient upon which a conclusion can be reached that he made written reports of the meetings of May 31 and June 1, other than the one he prepared on June 16, and that therefore it is not surprising that the R.C.M.P. could not locate any such reports.

The interview on November 8, 1977, of Staff Sergeant Albert by Superintendent Barr

40. On January 25, 1980, Mr. Albert was interviewed by a member of our investigative staff. This interview was part of the normal method of inquiring into complaints made by persons to us about the conduct of members of the R.C.M.P. Mr. Albert had lodged a complaint with us concerning a matter that he thought had occurred after he left the Force in 1978 and joined the private security firm of which Messrs. McCleery and Brunet were members. In the interview Mr. Albert referred to the discussion he had had on June 1, 1977, with Superintendent Robichaud, in which, he stated, Superintendent Robichaud had "discussed" with him that he was to see Mr. McCleery a second time and to "try to persuade" the latter not to see a representative of the Solicitor General. Mr. Albert even referred to the possibility that certain persons might interpret what Superintendent Robichaud had said rather as a request than as an order. When testifying, Mr. Albert suggested that what he said to our investigator constituted an allusion to the events of November 1977 involving himself and Superintendent Barr (Vol. C120, p. 15567). We can detect no such reference in what he said to our investigator. In any event, Mr. Albert himself finally told us that, when he met our investigator, he did not intend to refer to "the Barr matter" (Vol. C120, pp. 15566-7). Mr. Albert's failure to mention to our investigator what in June 1980 he testified to us had occurred is, to us, the first indicator that Mr. Albert's testimony is not accurate as to whether Mr. Barr, on November 8, 1977, asked him to change the report he had made on June 16, 1977.

41. The second such indicator is found in the letter which his counsel, wrote to us on May 2, 1980. We must quote the letter in part:

> Some time ago, I learned that immediately subsequent to a telephone call which Mr. McCleery had with the office of the Solicitor General in which he indicated that "the APLQ incident" was not "an isolated incident" (as the then Solicitor General had implied) and agreed to meet with

the then Deputy Solicitor General to elaborate on this, an active attempt was made by a senior officer of the RCMP in Montreal through a more junior officer, to ascertain what information McCleery would reveal. Subsequent to the report of this officer, following a meeting with McCleery, the said officer received an order to again meet with McCleery and this time dissuade him from divulging this information to the office of the Solicitor General.

Written reports of these two meetings were filed by the said officer.

I believe this is significant since on June 6, 1977 when the Deputy Solicitor General first advised the Solicitor General of the substance of the information which inter-alia McCleery had communicated to him that same day, the Solicitor General was attending a meeting with then Commissioner Nadon and General Dare. Both Nadon and Dare expressed surprise at what McCleery had just divulged and suggested that his motives were less than honourable. *As at that date* and in fact since the very latter part of May, the RCMP were not only aware of what McCleery would eventually disclose to the office of the Solicitor General and his motives in so doing but had actively attempted to dissuade him from disclosing this information to the office of the Solicitor General.

Subsequent to McCleery's meeting in Ottawa on June 6, 1977, the internal RCMP report of this attempt to dissuade McCleery was destroyed by a Superintendent of the RCMP who directed that another report, which did not refer to "instructions to dissuade McCleery", be substituted: the reason given by the Superintendent was that this original report would be "compromising" to the RCMP if a Commission of Inquiry were ever established and this document came to light.

The last paragraph quoted brought to our attention for the first time the possibility that some then unspecified Superintendent had destroyed Mr. Albert's report of the attempt to dissuade Mr. McCleery and substituted another report. When we received Mr. Campeau's letter we considered this allegation to be a most serious one, for, if true, it appeared to be an attempt on the part of someone in the R.C.M.P. to alter the R.C.M.P.'s internal records and thus perhaps to mislead us. It was in part because of this paragraph that we scheduled hearings in June 1980 and subpoenaed Mr. Albert. (Another reason was to inquire into the first allegation, that Mr. Albert had been ordered to attempt to dissuade Mr. McCleery from disclosing facts to the Solicitor General.)

42. It was only when Mr. Albert was recalled to testify on March 11, 1981 that we realized that the last words of the paragraph were of special significance when we came to assess the credibility of Mr. Albert's serious allegation against Superintendent Barr. It will be observed that the letter states that the reason given by "the Superintendent" was

> that this original report would be "compromising" to the RCMP if a Commission of Inquiry were ever established and this document came to light.

This is of vital importance, for here Mr. Albert's counsel states this as *the reason* given by the Superintendent for destroying the report by Mr. Albert and for issuing the "direction" that another report be substituted. Mr. Albert

admitted that he had given this information to Mr. Campeau. The "reason", if it had been stated by Superintendent Barr, was such that it could have been given only *before* the creation of a Commission of Inquiry. This Commission of Inquiry was established on July 6, 1977. Therefore, if that "reason" was stated by Superintendent Barr, the incident between him and Mr. Albert must have occurred before July 6, 1977. In fact, however, we know it occurred in November 1977. Putting the problem created by this sentence of the letter another way: we know that Mr. Albert met Superintendent Barr in November 1977. Assuming that when Mr. Albert told Mr. Campeau what had been said and done by Superintendent Barr, he had his dates wrong, it nevertheless remains the case that he appears to have stated to Mr. Campeau that Superintendent Barr gave a certain reason for what was being done. That reason is so nonsensical that it could not have been given. Nor, we note, did Mr. Albert state in his testimony that Superintendent Barr had given that reason.

43. The third such indicator is found in Mr. Albert's testimony that he raised the allegation against Superintendent Barr for the first time when he told Mr. Campeau. That must have been on March 13, 1980, for Mr. Campeau's statement of account for services rendered shows that it was on that date that he met Mr. Albert. Why did he tell Mr. Campeau then? He did so, he says, "Sur le coup de la colère" ("in a fit of temper"). He says that he was "tellement vexé" ("so annoyed") by the matter concerning which he had lodged a complaint with the Commission that he embarked upon a discussion with Mr. Campeau and mentioned his meeting with Superintendent Barr (Vol. C120, p. 15562).

44. For these reasons we disbelieve Mr. Albert's testimony that Superintendent Barr in November 1977 asked him to change a report that he had previously made as to what Superintendent Robichaud had said to him. Rather than conclude that Mr. Albert intentionally gave false testimony as to what Superintendent Barr said to him, we think that the anger that from January 1980 to this day has been entertained by Mr. Albert toward the R.C.M.P. for having, as he thinks, conducted surveillance upon him, has clouded his memory as to what occurred between himself and Superintendent Barr. Furthermore we accept the testimony under oath of Superintendent Barr that

> There was certainly no request from me, or intention on my part, for Mr. Albert to change his statement. Nor did I have a mandate to change his statement. His statement stood as it is. His statement still stands as it is, and it is, as far as I know, the only statement on the records. All we have is a memo that makes some comment on one paragraph in response to questions raised.

We think that Superintendent Barr did open his meeting with Mr. Albert by referring to the concern that had been expressed at the meeting with several counsel, and that this may have led Mr. Albert to think that he was expected to alter his story as to what Superintendent Robichaud had said to him. With hindsight, it would have been preferable for Superintendent Barr not to have mentioned what the concern was and simply to have asked Mr. Albert once again to state what it was Superintendent Robichaud had said. The manner of

raising the subject was such that Superintendent Barr should have realized that it might cause Mr. Albert to be concerned, not about the truth, but about protecting the Force. As Superintendent Barr told us,

> The force is seen by people as being almost a family, and if you feel you are about to betray the family, it is a very difficult thing to do... When you have to balance the loyalty that you have to the members of the family, to the loyalty of the family itself. I would submit it is a very, very difficult position for anyone to be in.
>
> (Vol. 194, p. 28584.)

As Superintendent Barr was aware that members such as Mr. Albert have such strong feelings of loyalty, it should not have come as a surprise to him that the manner of raising the subject would, as he admits, be likely to cause Mr. Albert to have concern as to whether Mr. Robichaud could be involved in a criminal investigation (Vol. C194, p. 28585). Nor should he have been surprised that Mr. Albert did, as Superintendent Barr himself sensed, become "considerably emotional about the dilemma he obviously felt he was in" (Vol. 194, p. 28583).

45. Although Superintendent Barr's method of opening the subject was unwise, when viewed with the perspective of hindsight and by the application of a standard of perfection, that is a far cry from concluding that he intended to cause Mr. Albert to mis-state the facts and be untruthful. We do not believe that he said anything to Mr. Albert with the intention of ordering, or even asking or expecting, Mr. Albert to falsify his account of what had occurred. We do not fault Mr. Barr in any respect, not even as to the degree of wisdom he used, for at the time we are satisfied that the pressures of time that were upon him in November 1977 were very great. Moreover, we do not conclude that Mr. Albert was lying when he made his allegation to us about Superintendent Barr. Rather, we believe that the emotions evoked by his anger at being, as he thought, the object of surveillance in January 1980, clouded his judgment when, later in 1980, he testified before us as to whether Superintendent Barr had, on November 8, 1977, expected him to change his account of the facts.

46. As we have concluded that Superintendent Barr did not intend to direct or persuade Mr. Albert to alter his version of what had occurred between him and Superintendent Robichaud, it follows that we do not think that Superintendent Barr received any instructions or suggestions from any of his superiors that he should try to get Mr. Albert to change his story. There is no evidence of any such conspiracy by members of the senior management of the Security Service or the R.C.M.P., and the likelihood of any such conspiracy is rendered nugatory by the fact that no written statement was taken from Mr. Albert, so that, in terms of written statements, Mr. Albert's statement of June 16, 1977, remained unaltered.

47. We, like Commissioner Gilbert, consider that Superintendent Barr's memorandum on its face discloses that he failed to inquire into whether, even if Superintendent Robichaud did not order or ask Staff Sergeant Albert to try to prevent or persuade Mr. McCleery from divulging facts to the Solicitor General's representative, nevertheless Superintendent Robichaud "was aware"

(to use Mr. Albert's own words on June 16) of "the reason for the meeting" — i.e. that Mr. Albert intended to try to persuade Mr. McCleery, and did nothing to prevent Mr. Albert from making that attempt. However, we draw no inference whatsoever from the failure of Superintendent Barr to inquire into that issue. Superintendent Barr's memorandum answered the questions put, but went no further.

Minority Report of Commissioner Gilbert

48. I am satisfied that during the meeting between Mr. Robichaud and Mr. Albert on June 1, 1977, prior to Mr. Albert's meeting with Mr. McCleery, there was a discussion about Mr. Albert trying to dissuade Mr. McCleery from going to see the Solicitor General or his representatives. I accept Mr. Albert's evidence that such a discussion occurred. I believe that it was clearly understood between Mr. Robichaud and Mr. Albert that Mr. Albert should meet immediately with Mr. McCleery with that purpose in mind since it is acknowledged by both Mr. Robichaud and Mr. Albert that the latter was on duty when he saw Mr. McCleery on June 1. I am satisfied that Mr. Robichaud ordered, or instructed or asked Mr. Albert to carry out that mission. To me, whatever the verb used, the relationship was one of a superior speaking to a subordinate. I am satisfied that Mr. Robichaud ordered Mr. Albert to carry out that mission, in the sense of a superior speaking to an inferior. I have no doubt that Mr. Albert was more than willing to meet again with his old friend, Mr. McCleery, and once again to try to convince him to stop pursuing his goal of obtaining redress for his dismissal from the Force, but Mr. Albert was adamant that on this occasion he was not doing it on his own initiative.

49. Mr. McCleery's evidence was clear that Mr. Albert persistently tried to get him to drop his efforts to seek redress and that on June 1, 1977, he noticed no difference in Mr. Albert's treatment of the matter. To him, Mr. McCleery, Mr. Albert was counselling him in the same way as he had on previous occasions.

50. I consider that my conclusion in this regard is consistent with the words used by Mr. Albert in his report of June 16, 1977, when he says:

> The reason for this meeting, of which Supt. ROBICHAUD was aware, was to convince McCLEERY not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex-confrères and discredit them for things they believed were right in the fight against Terrorism (the F.L.Q.).

I am also fortified in my conclusion by Mr. Albert's notes in his diary, made following the meeting, in which he says: "meeting not too encouraging". If his mission had simply been to get more information, those words would not have been appropriate; either he would have had the information or not. But if his mission was to dissuade Mr. McCleery, then the words are appropriate to describe his lack of success. I cannot accept Mr. Robichaud's evidence that he was simply seeking more information as to Mr. McCleery's intentions. He did not point to a single additional piece of evidence obtained by Mr. Albert on June 1, 1977, nor to his having reported any such additional evidence to Mr. Sexsmith. That is not conclusive, of course, but I consider it significant.

51. Counsel for the Government of Canada were rightly concerned when, on November 6, 1977, they read the relevant sentence in Mr. Albert's report of June 16, 1977, and attributed to it the possible meaning which they did. It was clearly improper for the Force, or a member of the Force, to attempt to dissuade Mr. McCleery from going to see the representatives of the Solicitor General. The Force, itself, had an obligation to bring the matters raised by Mr. McCleery to the attention of the Solicitor General.

52. While there is no conclusive proof that Mr. Robichaud's conduct on June 1st resulted from instructions received from his superiors, it can be inferred that Mr. Sexsmith and Mr. Nowlan were aware in advance of the intended second meeting between Mr. Albert and Mr. McCleery. This was discussed on the evening of May 31, when Mr. Robichaud drove to Ottawa to report on what had been learned by Mr. Albert at his May 31 meeting with Mr. McCleery. Mr. Robichaud recorded the information in the memo for file (Ex. M-112). It would be highly illogical that a second meeting would then be planned without a single word being uttered as to the purpose to be achieved. In this respect the report prepared by Mr. Barr (Ex. M-159) on November 8, 1977, which I shall discuss shortly, is a direct illustration of the involvement of Mr. Sexsmith in the meeting of June 1. It states:

> The D.D.G. (Ops) when asked for his recollections of his instructions to Supt. Robichaud on the evening of May 31st, and specifically in relation to the second meeting with McCleery, stated that *this meeting was agreed upon to* solicit additional information on McCleery's allegations. (My emphasis.)

53. This statement, which Mr. Sexsmith obviously volunteered to Mr. Barr on November 8, 1977, contrasts with his testimony before our Commission. When he was asked about his participation in the idea of having Mr. Albert meet Mr. McCleery once more, i.e. on June 1; he answered:

> A. I don't recall any specific discussion in that regard.
>
> (Vol. 190, p. 28085.)

Mr. Sexsmith was obviously wrong when he so testified and I accept his statement to Mr. Barr in November 1977, when his memory was likely to be fresher.

54. But there remains the enigma as to what the reason was for the meeting of June 1st between Mr. Albert and Mr. McCleery. One thing is certain, Mr. Albert did not initiate this meeting. As I have concluded, the meeting was planned by Mr. Robichaud with the cooperation of Mr. Albert, who told us frankly that he would have liked the plan to succeed (Vol. 191, p. 28225).

55. On the whole, I conclude that the meeting of June 1 between Mr. Albert and Mr. McCleery was discussed between Mr. Robichaud and Mr. Sexsmith and for that reason the true purpose of the meeting must also have been discussed. I am satisfied that the real purpose of that meeting was to try to persuade Mr. McCleery not to tell the Solicitor General about the wrongdoings of the R.C.M.P. The conclusion that Mr. Sexsmith was involved in both the planning and the purpose of the June 1 meeting is reinforced by three facts which put together show Mr. Sexsmith's state of mind at that time.

56. The first of these facts is Mr. Sexsmith's candid admission to us that "he would have thought that after all this time your commission has been sitting, it would have become rather obvious that the Security Service kept certain operational things from the Solicitor General" (Vol. 191, p. 28058). The least that can be inferred from that statement is that Mr. Sexsmith was certainly prepared in his own mind to hide things from the minister.

57. The second fact which supports the conclusion is that throughout the period of preparation of a statement to be made by the Honourable Francis Fox, in the House of Commons, which focussed on the A.P.L.Q. matter as an isolated incident, the senior echelon of the Force failed to disclose to Mr. Fox the memorandum made by Mr. Robichaud which contained many revelations.

58. Thirdly, it is significant in this chronology of events that Mr. Sexsmith was concerned to know exactly what information had been given to the Minister or his deputy. For example, on June 9 he placed a call to Mr. Tassé in an effort to find out what was known by the Minister.

59. For me, those facts put together argue persuasively that Mr. Sexsmith (and other officers of the Force) not only tried to keep the Minister in ignorance of its wrongdoings but tried to find out how much the Minister knew after Messrs. McCleery and Brunet had met Messrs. Tassé and Landry on June 6. These facts also demonstrate forcibly that the attempt to have Mr. Albert dissuade Mr. McCleery from speaking to the Solicitor General was an objective of top priority. Mr. Sexsmith's involvement in the three factual situations prevents me from accepting that he had no knowledge of a second meeting between Mr. Albert and Mr. McCleery and of its purpose. Furthermore, I am not prepared to accept Mr. Sexsmith's testimony on this matter because he denied to us any involvement in the June 1 meeting, while he clearly had stated to Mr. Barr that the purpose agreed upon for that meeting was to try to elicit more information about Mr. McCleery's allegations.

60. There is no evidence that Mr. Nowlan participated in this episode, even though he was present at the meeting between Mr. Sexsmith and Mr. Robichaud on May 31, 1977.

61. On the whole my conclusion as to the facts and comments on the conduct of the participants are as follows.

62. On May 31, in the evening, Mr. Robichaud discussed with Mr. Sexsmith the necessity of asking Mr. Albert to meet Mr. McCleery again, obviously for the purpose of trying to dissuade him from telling the Solicitor General about the wrongdoings of the R.C.M.P. In this regard the conduct of Messrs. Sexsmith and Robichaud is unacceptable.

63. On June 1, in the morning, Mr. Robichaud called Mr. Albert into his office and asked him to meet again with Mr. McCleery, obviously to try to dissuade him from speaking to the Solicitor General. In this regard the conduct of Mr. Robichaud is unacceptable.

64. On June 1, at lunch time, Mr. Albert met Mr. McCleery and tried to convince Mr. McCleery not to talk to the Solicitor General. In this regard the conduct of Mr. Albert is unacceptable.

65. It is my view that the conduct of Messrs. Sexsmith and Robichaud is subject to much greater censure. They were senior officers: at the time respectively Deputy Director General (Operations) and Acting Area Commander of the Security Service in the Province of Quebec. Whether or not they initiated the proposal that on June 1, 1977, Mr. Albert should attempt to dissuade Mr. McCleery does not conclude the matter. In my opinion their conduct was tantamount to an effort, through Mr. Albert, to try to dissuade Mr. McCleery. But even if I am wrong in that view, I am satisfied that they in the end knew, or ought to have known, what the course was that Mr. Albert intended to pursue or had pursued. They should have ordered Mr. Albert not to do so and having found out about it after the fact, the matter should have been taken to the Director General at least.

66. I have no doubt that when Mr. Albert met with Mr. McCleery on June 1, 1977, he was doing so at least with the direct authorization of Mr. Robichaud and with the agreement of Mr. Sexsmith and that Mr. Robichaud and Mr. Sexsmith understood the significance of what Mr. Albert was going to do. The conduct of Mr. Robichaud and Mr. Sexsmith was highly improper and was, in my opinion, motivated by an attempt to cover up wrongdoings of the Security Service. It was therefore unacceptable.

67. There is an additional aspect of this event which must be looked into. It has to do with the question whether Mr. Albert produced written reports after his meetings with Mr. McCleery on May 31 and on June 1, 1977, and what happened to those reports. On this point, the evidence is once again contradictory.

68. On one hand, Mr. Robichaud says emphatically that he did not receive a written report from Mr. Albert. On the other hand, Mr. Robichaud says that the requirement was to produce a report in writing if "they asked for something" (Vol. 190, p. 27932). Whatever these words of Mr. Robichaud may mean, it is logical to conclude that given the gravity of the situation and the fact that Mr. Robichaud made a report in writing when he reported in Ottawa on the evening of May 31, Mr. Albert is likely to have been expected to report in writing on his two meetings with Mr. McCleery.

69. This point is elucidated to my satisfaction when I read the testimony of Mr. Albert. Indeed Mr. Albert said that the rule was to report in writing (Vol. 191, p. 28228) and, to the best of his recollection, he did report in writing after each of his meetings which he attended on a duty basis. Mr. Albert was fortified by his recollection that when he produced a report for Mr. Nowlan on June 16 he was assisted by the two other reports which he had prepared (Vol. 191, pp. 28238-9). Mr. Albert is candid enough to state openly that he remembers also meeting privately with Mr. McCleery on June 14 at the Elmhurst Dairy and after that meeting he did not submit a report, because he had not met him on duty at the request of his superior (Vol. 191, p. 28231).

70. While those reports were addressed to Mr. Ferraris, I nevertheless believe that Mr. Robichaud saw them. In any event, Mr. Robichaud knew their content, since he was the one to whom Mr. Albert reported the outcome of each of his meetings with Mr. McCleery. Furthermore, without accusing

anyone of misconduct, as nobody could be identified in that respect, the reports of Mr. Albert could not be found. This is appalling, and I can say no more. One logical observation though is that the two reports in question would unquestionably shed light on the purpose of the meetings between Mr. Albert and Mr. McCleery, had they been produced.

71. I now turn to the review of this matter as it was revived in November 1977. The problem then arose under circumstances well described in the memorandum (Ex. UC-84), the contents of which I fully accept. It reads:

> On November 1st, 1977, Joseph R. Nuss, Q.C. and Allan Lutfy, both counsel to the Solicitor General, in the presence of then Assistant Commissioner Raymond Quintal, had seen, among other documents, the document which is now Exhibit M-158.
>
> On November 5, 1977, Messrs. Nuss and Lutfy, when they were going through the Quintal-Nowlan Report at RCMP Headquarters in Ottawa, noted that Tab 46 (now Exhibit M-158) contained the following text:
>
> "My second meeting with McCleery was on Wednesday June 1st, 1977 when I called him and invited him to a game of tennis at the St. Laurent Tennis Club on Jules Poitras St., Ville St. Laurent. The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service because he would lose the respect of his ex confreres and discredit them for things that they believed were right in the fight against terrorism (the F.L.Q.). His determination was still very evident and I believe not even the Pope could have convinced him to change his mind."
>
> Messrs. Nuss and Lutfy became interested in that text since it seemed to indicate a possible attempt a) to prevent the representative of the Solicitor General from learning certain allegations and b) to persuade McCleery not to divulge criminal acts. They drew the attention of Assistant Commissioner Quintal to this document on the same day and indicated that they intended to raise this question with J.F. Howard, Q.C., Chief Counsel to the Commission.
>
> This was done at a meeting held on the next day, November 6, which was attended by J.R. Nuss, Q.C., A. Lutfy, J.F. Howard, Q.C., Assistant Commissioner Quintal, Superintendent D.K. Wilson and Superintendent A.M. Barr.
>
> During the discussion, the RCMP expressed a desire to clarify this question through an interview with Staff Sergeant Albert and Superintendent Robichaud. Mr. Howard, accepted this suggestion provided that the result be communicated to him. Mr. Nuss and Mr. Lutfy agreed to this manner of proceeding.

72. That there was need for clarification after Mr. Albert made the statement to Mr. Nowlan is clear. Mr. Albert's statement, as worded, raised an issue which the government counsel had rightly perceived. Was there on the part of Mr. Albert an intention to prevent the Solicitor General from learning certain allegations and if so, to what extent were Mr. Robichaud and higher echelons involved? To answer these questions required explanations from Mr. Albert on

points which his statement (Ex. M-158) did not cover. In addition there was a need to clarify the meaning of one phrase used in the statement.

73. Let us look first at omissions which needed to be corrected to insure a clarification of the issue. When I read carefully paragraph 5 of Exhibit M-158, it is striking that the statement made by Mr. Albert to Mr. Nowlan on June 16, 1977, does not specifically say whether he, Mr. Albert, had spoken to Mr. McCleery along the lines of the stated purpose of the meeting. This point, needless to say, called for some clarification. Mr. Barr testified that:

> the relevancy was whether or not Mr. McCleery had been counselled not to speak out. Beyond that everything else was, you know, was incidental, if you like.
>
> (Vol. 194, p. 28539.)

With respect, I cannot accept that that was the only relevant point. First, it was extremely important to ascertain what Mr. Albert had spoken to Mr. McCleery about, a point which his statement of June 16, 1977, did not make. Second, it was crucial to ascertain whether Mr. Albert had been ordered or instructed or asked or permitted by Mr. Robichaud to speak to Mr. McCleery. Third, if the second point was answered in the affirmative, what exactly was Mr. Albert asked or instructed to tell Mr. McCleery. Finally, it was equally important to find out whether Mr. Albert had informed Mr. Robichaud, after the meeting of June 1, as to what had been said by Mr. McCleery. In my opinion it was essential to cover these four omissions to appreciate correctly the magnitude of the problem and to be able to judge the conduct of the participants.

74. In addition, there is no doubt that paragraph 5 of Exhibit M-158 needed to be clarified on another very important issue. This need arises out of the ambiguous wording. The phrase reads:

> The reason for this meeting, of which Supt. Robichaud was aware, was to convince McCleery not to pursue his intention to divulge whatever he knew of incidents that occurred during his service. . .

As one cannot fail to observe, the ambiguity has to do with the words "The reason for this meeting, of which Supt. Robichaud was aware". Was Supt. Robichaud aware of the fact of the meeting, or was he aware of the purpose of the meeting or was he aware of both the fact of the meeting and the purpose of it?

75. According to Mr. Barr's testimony, this meeting with Mr. Albert produced clarification of this very issue in that it brought out that it was really the "meeting" that Mr. Robichaud was aware of, not the "reason" for the meeting. However, in his report (Ex. M-159), covering this portion of the meeting, Mr. Barr wrote:

> S/Sgt. Albert, when asked to comment on his previous statement, confirmed that he was not given any order to attempt to influence McCleery's course of action but was asked to meet with McCleery to gain additional information on allegations.

This report states clearly that Mr. Robichaud was aware of both the meeting and the reason for the meeting. However, it is immediately apparent that,

according to this document, the "reason" for the meeting is not the same as that set out by Mr. Albert in para. 5 of Ex. M-158, i.e. "to convince McCleery not to pursue his intention to divulge", but rather, "to gain additional information on allegations".

76. Mr. Barr did not tell Mr. Albert that this was not only a clarification but a radical change of his previous statement. His testimony on this point is as follows:

> Q. Did you indicate that to him, that there was a complete change?
>
> A. No, I did not, sir. If he takes that impression, then there is a misunderstanding. The memo I wrote, as indicated, was a memo in an attempt to *clarify* the meaning of paragraph 5, not to change paragraph 5. Paragraph 5, as I was concerned (sic), and as far as I was concerned, and as far as I am concerned now, in his statement, stands as his statement of June 16th. Had that statement been changed, then my understanding of the procedure would have been that someone would have taken a new statement from him. I didn't. And to my knowledge, no one else did. *Therefore, his statement was not changed.* (My emphasis.)
>
> (Vol. 194, pp. 28605-6.)

However, when this line of questioning is pursued to the limit by Commission counsel, here is what Mr. Barr says:

> Q. But just reading the first few lines of paragraph 4, sir, would you not recognize that this is a *complete change* from his statement of the 16th of June, 1977.
>
> A. *Yes, obviously it is.* But if you read it the way it was intended to convey his — as I understood, his meaning was that the misunderstanding of his statement was possibly in the wording. And that's all that was being recorded: that in his view, his paragraph 5 of June 16 could have been understood because of the wording that he used. (My emphasis.)
>
> (Vol. 194, p. 28606.)

And then, the paragraph goes from there.

77. In my opinion, Mr. Albert did, on November 8, change his statement of June 16, and that change was as to the reason for the meeting. The purpose of the meeting on November 8 was purported to be to determine whether or not Mr. Robichaud was aware of the "reason" for the meeting between Mr. Albert and Mr. McCleery on June 1, 1977. The end result of the meetings between Mr. Barr and Messrs. Robichaud and Albert on November 8 was that Mr. Robichaud was aware of the reason for the June 1 meeting but that the reason for that meeting, previously stated by Mr. Albert (Ex. M-158) was now changed (Ex. M-159). Mr. Albert says that the reason contained in Exhibit M-159 is false (Vol. 198, p. 29237). I believe that.

78. To accomplish this mission, Mr. Barr had a very simple thing to do. He should have called in Mr. Robichaud and Mr. Albert and asked them to elucidate the ambiguity by simply showing them the different meanings that could be attributed to the ambiguous phrase. Mr. Barr could then have requested Mr. Robichaud and Mr. Albert to submit a short report to clarify

the issue, making sure that Mr. Robichaud did it in his own words, distinctly and without the knowledge of what Mr. Albert was himself going to write. Then Mr. Barr could have gone to Mr. Sexsmith and requested him to do the same thing. This is not what did take place. Instead, Mr. Barr told Mr. Albert that some government lawyers had looked at his statement and considered that if certain of the language remained as written the Force could be in serious trouble for obstruction of justice. He pointed out to Mr. Albert the offending words and how they had been interpreted by the lawyers. He then asked Mr. Albert if the lawyers' interpretation was accurate. Faced with this, Mr. Albert said that he felt compelled to change his statement.

79. I have no doubt that the way in which the interview was structured, tended to lead Mr. Albert inexorably to the conclusion that if he did not change his statement he would be acting disloyally towards the Force and placing it and Mr. Robichaud in a difficult position. An interview conducted in that fashion is totally unacceptable. I am surprised at the testimony of Mr. Barr who recognized first that "the relevancy was whether or not Mr. McCleery had been counselled not to speak out" (Vol. 194, p. 28539) and subsequently answered Commission counsel as follows:

> Q. Did he (Albert) indicate to you, sir that he had gone there at Mr. Robichaud's request? Or did you know that?
>
> A. I don't know whether we discussed it in those terms. *I do not think that was necessarily relevant.* (My emphasis.)
>
> (Vol. 194, p. 28578.)

80. For me nothing could be more relevant if it is true that Mr. Barr, as he says, was trying to determine whether or not Mr. McCleery had been counselled not to speak out.

81. I have concluded that Mr. Barr's attitude was tantamount to asking Mr. Albert whether he wanted to change his statement and in these circumstances I can see how it was not relevant to discuss with Mr. Albert whether or not Mr. Robichaud had requested him to go to the meeting.

82. One word has to be said as to the manner in which Mr. Albert's new statement was taken. According to Mr. Barr, he wrote, himself, the change in the statement and then read it to Mr. Albert. Mr. Barr said that he did not give Mr. Albert an opportunity to read it and to sign it should he find it in conformity with his own thinking. Fortunately, Mr. Albert says that he saw the text that Mr. Barr prepared in lieu of a corrected statement, which he remembers to be a three-page statement, and that he read it and then signed it. Mr. Barr would have acted in an abnormal manner if he had not done all that Mr. Albert said he did, for it is a matter of very common practice to have one sign a statement, the purpose of which is to correct a previous statement, also signed. I think that this sequence took place in the manner described by Mr. Albert. But then the question arises as to where the three-page statement is that Mr. Albert said he had signed. This document has not been produced.

83. Sometime in January 1980, Mr. Albert came to see one of our investigators to make an allegation about his being victimized by the Force. Specifical-

ly, Mr. Albert complained of the fact that the Force had put him under surveillance — a situation which made him extremely angry at the Force. There is no doubt that, those being the circumstances when Mr. Albert decided to tell this Commission about the November 8, 1977, meeting with Mr. Barr and the request to change his version, there was a degree of retaliation on the part of Mr. Albert. But I do not think that he who retaliates is necessarily lying for that very reason. I believe that Mr. Albert was somehow inspired by vengeance when he revealed things to our investigator, but this would not, in my opinion, cloud his memory or justify a conclusion that what he was saying was necessarily wrong.

84. In reaching my conclusions, I must stress that I am not depending on a choice between the version of Mr. Barr and that of Mr. Albert, but rather, on an overall appreciation of what both Mr. Barr and Mr. Albert have said. Mr. Albert's testimony is, in my opinion, confirmed in many ways by that of Mr. Barr.

85. On the whole I therefore conclude:

(a) On November 6 the several legal counsel agreed to a clarification task to be accomplished, provided the result be communicated to Mr. Howard. I conclude that such result was not communicated to Mr. Howard. In this regard, the conduct of Mr. Barr and Mr. Quintal is not acceptable.

(b) The clarification was about Mr. Robichaud's awareness: was he aware of the fact of the meeting of June 1 or of the purpose of the meeting, or both. As to the purpose, Exhibit M-158 leaves no room for doubt, nor need for clarification.

(c) Mr. Barr opened the meeting with Mr. Albert by pointing out to him the problem the Force was facing if paragraph 5 of the statement (Ex. M-158) were to remain as it was.

(d) Mr. Barr asked Mr. Albert whether he minded changing his statement. It was a request, not an order. In this regard Mr. Barr's conduct was unacceptable.

(e) Mr. Barr reminded Mr. Albert of his duty of loyalty to the Force. In this regard Mr. Barr's conduct was unacceptable.

(f) Mr. Barr did not discuss with Mr. Albert whether Mr. Robichaud had requested him to go and see Mr. McCleery. Mr. Barr did not see it as relevant. In this regard Mr. Barr was acting in a careless manner.

(g) Mr. Albert responded favourably to Mr. Barr's request to change his statement and therefore changed it. The whole exercise between Mr. Albert and Mr. Barr was not one of clarification, but one of discussing whether Mr. Albert was ready to change paragraph 5 of Exhibit M-158. In this regard, the conduct of Mr. Barr and Mr. Albert was unacceptable. At the end of the interview, what we have is a new version from Mr. Albert, which confirms that Mr. Albert was asked to change his statement of June 16, 1977.

(h) Mr. Barr wrote the new statement. Mr. Albert signed a *three-page document*. Mr. Barr read the statement. This document has not be produced.

(i) The June 16 statement of Mr. Albert (Ex. M-158) is true, and Mr. Albert meant by that statement that Mr. Robichaud was aware of both the fact of the meeting of June 1 and of the purpose of that meeting. Exhibit M-159 does not represent the truth as it refers to Mr. Robichaud and Mr. Albert.

(j) If in conducting himself, both in what he did and how he did it, Mr. Barr was executing instructions which he got from Mr. Dare and Mr. Quintal, the latter two are equally to be blamed. However, I have no evidence that that was the case.

(k) Even if Mr. Albert was affected by anger when he saw our investigator in January 1980, his November 16 statement to Mr. Nowlan (Ex. M-158) shows that he had told Mr. Nowlan that Mr. Robichaud was aware of the June 1 meeting and/or its purpose.

(l) When he met Mr. Barr on November 8, 1977, Mr. Albert changed his version. The question is whether he changed it on his own or at the request of Mr. Barr. On the whole, I conclude that Mr. Albert changed his version at the request of Mr. Barr. The conduct of both of them was not acceptable.

PART VI

SPECIFIC CASES REFERRED FOR POSSIBLE PROSECUTION AND DISCIPLINARY ACTION

INTRODUCTION

1. In each of the incidents described in the chapters of this Part there has been activity by a member or members of the R.C.M.P. which constitutes, in our opinion, conduct which is either clearly illegal or which may likely be illegal. In Part I of this Report — the General Introduction — we repeated what we said in our Second Report as to how we define the phrase "not authorized or provided for by law" found in our terms of reference. We there set out various characteristics of what might be described as conduct "not authorized or provided for by law". Included in our definition were acts which were (a) offences under the Criminal Code or under other federal or provincial statutes, (b) civil wrongs, (c) beyond the statutory authority of the R.C.M.P. or (d) not authorized by normal procedures within the R.C.M.P. We also pointed out that we did not intend to ignore the "moral and ethical implications" of conduct.

2. The chapters which have been included in this Part are reported on separately from those in Parts IV and V on the basis that the chapters in this Part involve conduct by members of the R.C.M.P. which might be offences under the Criminal Code or under other federal or provincial statutes, exclusive of the disciplinary sections of the R.C.M.P. Act (the latter are found in Part V). Thus, although the conduct may concurrently fall within categories (b), (c) or (d) set out in the preceding paragraph, it is because the conduct may be within category (a) that our Report on it is included in this Part.

NOTE BY THE COMMISSIONERS
August 5, 1981

1. The reasons for our recommending a delay in publication of our Report as to situations which may possibly lead to criminal proceedings are stated in Part VIII, paras. 1-8. Those reasons apply to most of the chapters in Part VI, which the Government has decided not to publish at this time, as we recommended. They are entitled as follows:

Human Sources — Security Service

Specific cases of Access to and Use of Confidential Information Held by the Federal Government (Department of National Revenue)

Attempts to Recruit Human Sources
The Minerve Communiqué
Burning of a Barn
Removal of Dynamite
Operation Bricole
Operation Ham
Checkmate

2. However, our reasons for a delay in publication were intended to apply only to specific situations concerning which we heard evidence or to which we have reported on the basis of an examination of R.C.M.P. files. There are three chapters of Part VI which do not report on specific situations. Therefore our reasoning does not apply to them. They are entitled as follows:

Specific Surreptitious Entry Cases

Specific cases of Access to and Use of Confidential Information Held by the Federal Government (Other than D.N.R.)

Specific Mail Check Cases

These chapters are being published now.

3. Furthermore, our recent review of Chapter 11, entitled *Matters Concerning and Undercover Operative, Warren Hart* has reminded us that only some of the twelve specific topics reported on in that chapter give rise to the possibility of prosecution of a member of the R.C.M.P. Therefore the rationale for a delay in publication pertains only to the parts of the chapter reporting on those topics. The remainder of the chapter is being published now:

4. In addition there are some chapters that deal with events that have not so far been in the public domain. They are of a nature that, in our view, they should be dealt with in accordance with the procedures recommended by us in our Second Report, Part V, Chapter 8, paras. 31-38. It is possible that the result of the application of that procedure will be that the Attorney General of

Canada or the Attorney General of a province may decide that it would not be in the public interest to prosecute, or to make known any facts whatsoever. If such should be the case, it would obviously be undesirable that publication of any facts in this Report should prejudice such a decision. We shall say only that the facts as they are known to us relate entirely to the conduct of members of the R.C.M.P. and not in any way to that of senior officials of the government outside the R.C.M.P. or to that of Ministers of the Crown.

CHAPTER 1

HUMAN SOURCES — SECURITY SERVICE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 2

SPECIFIC SURREPTITIOUS ENTRY CASES

INTRODUCTION

1. During the course of our investigations and hearings a number of specific cases have been brought to our attention which involve either the surreptitious entry by members of the R.C.M.P. into premises occupied by someone else or the surreptitious interference by members of the Force with chattels owned by someone else. In this Part of our Report we discuss separately several of these cases. Such reports are found in Chapter 9 (Operation Bricole), Chapter 10 (Operation Ham), Chapter 7 (burning of a barn), and Chapter 8 (removal of dynamite)*.

2. In our Second Report, in Part III, Chapter 2, we discussed in considerable detail the evidence we had received with respect to the extent and prevalence of these practices. We also discussed in that chapter the various legal issues which arise with respect to the practices. We will not repeat here that discussion of the legal issues; rather, we shall briefly summarize some of the facts contained in the Second Report on this subject and make recommendations as to the procedure which we consider ought to be followed with respect to the facts reported by us.

3. From a large volume of cases containing the potential for a finding of activity "not authorized or provided for by law", we selected six as to which we received detailed evidence, i.e., those mentioned above as having been reported on separately. With respect to the remainder we have obtained from the R.C.M.P. factual information ranging from details of dates, names and places in some cases to purely statistical information in others. Under those circumstances we recommend a procedure which ought to be followed with respect to further investigations.

4. In Reasons for Decision rendered by us on May 22, 1980, which are reproduced in full as Appendix "H" to our Second Report, we discussed circumstances in which "... the conduct concerning what [we] may report cannot, as described by the Commission, give rise to any criminal or disciplinary proceedings against any individual". We then described situations in which that might occur, of which four are applicable to the discussion of specific surreptitious entry cases which follows, as well as to the discussions of

* Those chapters are not being published at this time, for the reasons given in Part VIII relating to the Commissioners' Report as to specific situations that may give rise to prosecutions.

specific cases of access to confidential government information and specific mail check cases which are contained in Chapters 3 and 4 of this Part. Those four are where:

(i) the Commission's evidence is as to the general nature and purpose of the activities but the Commission does not have any evidence of the names of participants or the particulars of any specific instances. There are a number of investigative techniques, the use of which by members of the R.C.M.P. may not have been authorized or provided for by law, which have been investigated by the Commission as to the "extent and prevalence" of the use of the technique without the Commission having obtained evidence of the particular cases in which over the years or decades the technique was used, or, consequently, of the identity of the individuals involved, whether members of the R.C.M.P. or not. To have done so in regard to the use of these techniques would frequently have been impossible, since no records were kept, or, if kept, records would no longer be available. Moreover, to try to reconstruct the individual situations would have required a much larger investigative and legal staff and would inevitably prove to be an exercis in e futility;

(ii) the Commission's evidence is as to a general practice or system and the names of some participants but not all of them, and as to which even if the Commission has the names of some participants it does not have the particulars of any specific case so that the Commission is in no sense considering any specific "offence";

(iii) the Commission's evidence is as to specific acts in a specific case but not the names of the participants, or at least not all of them, and as to which none of the participants has given evidence;

(iv) the Commission has detailed evidence of the specific acts in a specific case, the names of all or some of the participants, and perhaps, but not necessarily, evidence as to exactly what all the participants did and the activities cannot be said to be a transgression of the Criminal Code or other statute law or of the law of tort or delict, or a major service offence under Section 25 of the R.C.M.P. Act. Nevertheless, if they occurred, they may be, in the opinion of the Commission, conduct which is "not authorized by law" in the sense that it is beyond the duties of a member so to conduct himself: i.e., if such conduct is not within the phrase "such security and intelligence services as may be required by the Minister" (quoting section 44(e) of the Regulations).

5. In dealing with the cases and the statistics, we consider it helpful first to make a distinction between the C.I.B. side of the Force and the Security Service, and then in the case of each of them to make a further differentiation between cases involving electronic surveillance and those which can be described as intelligence probes. With respect to intelligence probes, we do not propose to make a further division between those cases which solely involve entry into premises, and those which involve interference with chattels.

A. C.I.B.

(a) Surreptitious entries related to electronic surveillance

Summary of facts

6. Statistics provided to us by the R.C.M.P. show that for the period from 1963 to the coming into force of the Protection of Privacy Act on July 1, 1974, there were 3,419 installations of electronic listening devices. Those installations involved 1,118 entries. There is no indication how many of those entries were into buildings and how many into other places, such as automobiles. Nor is there any indication as to how many of the entries were made with the consent of a person entitled to give consent, such as consent by the manager of a hotel prior to occupation of a hotel room by the target.

7. For the period from July 1, 1974, to the end of 1979, the statistics on electronic surveillance are available through the Annual Reports tabled by the Solicitor General in Parliament and the Annual Reports tabled by the provincial attorneys general in their respective legislatures. However, those reports, while indicating the number of authorizations granted, do not contain statistics as to entries effected in carrying out the authorizations. Also, the reports filed by the provincial attorneys general cover all the applications by them with respect to all the police forces under their jurisdiction, without distinction between the R.C.M.P. and the other police forces.

8. For the reasons set out in Part III, Chapter 2, of our Second Report, we are satisfied that in all cases of surreptitious entry, without the consent of a person entitled to give such consent, for the purpose of installing, maintaining or removing an electronic listening device, a trespass occurred. That is so whether or not the entry took place pursuant to an authorization granted under the Protection of Privacy Act. We are further satisfied that prior to July 1, 1974, all such entries for the purpose of installing microphones took place pursuant to a policy of the Force. In Part III, Chapter 1 of this Third Report, we discussed the responsibility of those who formulated the policies.

Conclusions

9. We noted in our Second Report that the entries subsequent to July 1, 1974, were made pursuant to a legal opinion obtained from the Department of Justice. We do not fault either those formulating the policy or those carrying it out for any conduct which was in accord with legal advice from that source. We do not consider it appropriate that any action of a disciplinary or legal nature be brought by the government or the R.C.M.P. against any member of the Force who participated in the planning or execution of either an entry into premises or an interference with goods and chattels for the purpose of installing, maintaining or removing an electronic listening device, pursuant to such opinion. In Part X, Chapter 5, of our Second Report we recommended legislative amendments to clarify the legal position with respect to entries for the purpose of conducting electronic surveillance.

10. Although there may be cases in which those planning and participating in surreptitious entries took steps beyond what was reasonable for the installation,

maintenance and removal of the listening device, no such cases have come to our attention. In our view, the Attorney General of Canada, using the personnel of the Department of Justice, should review all the files in the possession of the R.C.M.P. which relate to such entries with a view to determining whether any such unreasonable conduct occurred. If, after such a review, the Attorney General of Canada considers that in any case the conduct discloses evidence of commission of an offence under the Criminal Code, that case should be referred to the appropriate provincial attorney general.

(b) Intelligence Probes

Summary of facts

11. In Part III, Chapter 2, of our Second Report we discussed the difficulties we experienced in obtaining information relating to intelligence probes in criminal investigations. In response to questions sent to divisions of the Force, for the purpose of compiling evidence to be presented to us, it was disclosed that the following intelligence probes occurred:

"D" Division (Manitoba)	2
"E" Division (British Columbia)	402
"F" Division (Saskatchewan)	1
"K" Division (Alberta)	9

In our Second Report we pointed out the anomaly of there being no intelligence probes reported from Ontario or Quebec. We also noted that no records were kept in any of the divisions and that all information provided was volunteered from the memory of members.

12. We analyzed the reasons for the huge discrepancy in the figures from British Columbia, and the explanations provided in the subsequent report prepared by the Deputy Attorney General of that Province for his Attorney General. The British Columbia Department of the Attorney General conducted an investigation of the 402 cases reported for that province. The Deputy Attorney General then recommended that there be no prosecutions of those involved in the entries, even in four cases in which chattels had been surreptitiously removed. The Attorney General concurred with that recommendation.

Conclusions

13. We consider that in the cases reported from Manitoba, Saskatchewan and Alberta, the files should be made available to the respective attorneys general of those provinces for investigation and disposition as each considers appropriate. In all of the cases reported, including those from British Columbia, we think that the Commissioner of the R.C.M.P. should examine the facts to determine whether the conduct of the members involved was unreasonable, having regard to Force policy at the time, with a view to determining whether disciplinary action ought to be taken against the members.

B. SECURITY SERVICE

(a) Surreptitious entries related to electronic surveillance

Summary of facts

14. The statistics provided to us by the R.C.M.P. Security Service in relation to electronic eavesdropping do not enable us to determine the extent to which surreptitious entries were necessary to carry out that eavesdropping. We were told in evidence that from 1971 to February 1978 there had been 580 installations by the Security Service, 223 of long-term listening devices and 357 of short-term devices, but that the number of entries with respect to those installations could not be determined. The only evidence before us was that the R.C.M.P. files disclosed that with regard to the 223 long-term devices there had been 55 instances of entry. Some of those entries may not have constituted trespass because the consent of a person entitled to give such consent may have been obtained.

15. Since the coming into force of the Protection of Privacy Act on July 1, 1974, a warrant from the Solicitor General has been required for electronic eavesdropping by the Security Service. The Security Service has detailed records of all electronic surveillance installations both before and after July 1, 1974. The Annual Reports tabled by the Solicitor General in Parliament, pursuant to section 16(5) of the Official Secrets Act, disclose the number of warrants issued as follows:

1974 — 339
1975 — 465
1976 — 517
1977 — 471
1978 — 392
1979 — 299

As we pointed out in our Second Report, those annual figures are somewhat misleading because they include renewals from the previous year.

Conclusions

16. As with surreptitious entries in connection with electronic eavesdropping on the criminal investigation side, we consider that both before and after July 1, 1974, any entries effected without the consent of a person entitled to give consent constituted trespass, and any interference with chattels constituted a trespass to chattels. Again, it is our opinion that no action should be taken by the government or the R.C.M.P. against any of the persons planning or participating in such entries, by reason only of the trespassory aspects. We take this position because, prior to July 1, 1974, all such entries were effected pursuant to R.C.M.P. policy, and subsequent to July 1, 1974, pursuant to authorization by the Solicitor General of Canada who fully expected such entries to take place in the case of microphone installations. Moreover, the R.C.M.P. knew that the view of the Department of Justice, expressed when the legislation was being prepared, was that such entries were lawful even without express provisions in the legislation, by virtue of section 26(2) of the Interpre-

tation Act. In our Second Report, we disagreed with that view, but it remains a fact that all concerned acted upon that advice and should not be faulted for having done so. In Part V, Chapter 4, of our Second Report we recommended legislative amendments to clarify the legal position with respect to entries for the purpose of conducting electronic surveillance.

17. We think that the Department of Justice should examine all available files of the Security Service which contain details of such entries with a view to determining whether there was any conduct on the part of the participants which went beyond what was reasonably necessary to install, maintain and remove the electronic devices. If, in the opinion of the Attorney General of Canada, any such conduct constituted a criminal offence, we recommend that he proceed in accordance with the system which, in Part V, Chapter 8 of our Second Report, we recommended be established on an interim basis, pending federal-provincial discussions on the matter. In addition, if any unnecessary or unreasonable damage was inflicted on the property of any person, we recommend that the person be compensated by the Government of Canada for any such damage, as set out in Part V, Chapter 4, of our Second Report.

(b) Intelligence Probes

Summary of facts

18. The Security Service provided us with the details of 47 entries, relating to 34 targets. Two of the entries were not what are commonly referred to as intelligence probes; rather, they were preparatory to the installation of an electronic listening device. Two of the cases have been reported on separately in this Part but are not being published at this time. One aspect of a third case has been reported on separately in Part IV . It concerns the destruction of an article. We have provided to the Clerk of the Privy Council, on behalf of the Governor in Council, the details of the 47 entries as they were given to us by the R.C.M.P. We have also identified for the Clerk which of the cases were those described in our Second Report.

Conclusions

19. It is our view that details of all these Security Service intelligence probes should be provided to the Attorney General of Canada who, using the personnel of the Department of Justice, should investigate them with a view to determining whether there is evidence that any criminal offences may have been committed. If, in his opinion, there is any such evidence we recommend that he proceed in accordance with the system which, in Part V, Chapter 8 of our Second Report, we recommended be established on an interim basis, pending federal-provincial discussions on the matter.

C. GENERAL CONCLUSIONS

20. We have concluded that with respect to all surreptitious entries by both the C.I.B. and the Security Service, no action should be taken by the government or the R.C.M.P. against those planning or participating in such surreptitious entries merely by reason of the trespassory nature of the activity. We have come to this conclusion because such entries were conducted as a part

of Force policy and we do not consider it appropriate that any disciplinary or legal action be taken by the government or the R.C.M.P., against a member of the Force carrying out Force policy, for unlawful activity amounting only to a civil wrong. Earlier in this Report we expressed our views as to the responsibility of those who formulated the policies on behalf of the Force. In our Second Report we stated categorically that it is not acceptable for a member of a police force or of a security intelligence agency to consider that what he is doing is not unlawful merely because it involves the commission of a civil wrong. Every member of the Force and the security intelligence agency must be made aware of that immediately. We do not consider that in the future any such conduct should be excused.

21. However, we consider that any conduct by a member, whether on the C.I.B. side or the Security Service side, which went beyond what was reasonably necessary to accomplish Force policy should be examined by the Commissioner of the R.C.M.P. to determine whether disciplinary action should be brought against that member, and by the Attorney General of Canada to determine whether what the member did might have constituted an offence. If the Attorney General of Canada concludes that there is evidence of the commission of an offence we recommend that he proceed in the way we set out in Part V, Chapter 8 of our Second Report.

CHAPTER 3

SPECIFIC CASES OF ACCESS TO AND USE OF CONFIDENTIAL INFORMATION HELD BY THE FEDERAL GOVERNMENT

A. DEPARTMENT OF NATIONAL REVENUE

[This section of this chapter, consisting of paragraphs 1 to 8, is not being published at this time, pending the disposition of possible legal proceedings.]

B. UNEMPLOYMENT INSURANCE COMMISSION

Introduction

9. The policies and practices of the C.I.B. and the Security Service in obtaining access to data held by the Unemployment Insurance Commission (U.I.C.) and the extent and prevalence of the practice, were set out in Chapters 5 and 6 of Part III of our Second Report. Public and *in camera* hearings were held on this topic.

10. As was the case with access to Department of National Revenue data, the arrangements made with the U.I.C. by the C.I.B. and the Security Service were separate and distinct. We shall deal with the summary of facts separately but our conclusions will relate to both the C.I.B. and the security Service.

(a) C.I.B.

Summary of facts

11. All of the evidence that we received relating to the C.I.B. was statistical except to the extent that we were told the names of certain police forces and government agencies, both domestic and foreign, on whose behalf the C.I.B. had obtained information from the U.I.C. The names of those Forces and agencies are set out in Part III, Chapter 5, of our Second Report, as is the statistical data. That data discloses that from 1974 to April 1978 there were 1,623 requests from the C.I.B. for information. Many of those requests concerned offences related to the unemployment insurance programme, although the evidence before us did not disclose the precise number.

(b) Security Service

Summary of facts

12. The only evidence we heard as to specific cases involving the release of information to the Security Service by the U.I.C. was with respect to requests which had been made by Security Service Headquarters from the summer of 1973 to June 1978. During that period there were 1,337 such requests. There was no evidence as to how many of those requests resulted in a transfer of information.

(c) Conclusions and recommendations

13. In our Second Report we concluded that

> . . . throughout the three decades since 1946, the R.C.M.P. has obtained information from the staff of the U.I.C. by means which. . . have violated the confidentiality provisions of the legislation.

14. We recommend that the relevant evidence in the transcripts of hearings and the exhibits filed be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

C. DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE: THE INDUSTRIAL RESEARCH AND DEVELOPMENT INCENTIVES ACT

Introduction

15. We heard no testimony with respect to this subject but there was filed with us an exhibit (Ex. N-1) containing a number of documents with respect to this relationship. We discussed the relevant portions of those documents in our Second Report, Part III, Chapter 5. What follows is also from documents found in that exhibit.

Summary of facts

16. The only case of which we are aware, in which the R.C.M.P. obtained access to information in the files of the Department of Industry, Trade and Commerce, where such information had been obtained by that department under the Industrial Research and Development Incentives Act, was described briefly in Part III, Chapter 5, of our Second Report. It occurred in 1974.

Conclusions and recommendations

17. We recommend that Exhibit N-1 be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigation,

including review of the appropriate R.C.M.P. files, as he considers necessary to obtain the details of the one incident described in the documents contained in that exhibit. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

D. DEPARTMENT OF NATIONAL HEALTH AND WELFARE: FAMILY ALLOWANCES AND OLD AGE SECURITY

Introduction

18. Again, with respect to this Department, all of the evidence is documentary and is found in Exhibit N-1.

Summary of facts

19. The documents in N-1 disclose that information was given to the C.I.B. by personnel in the Department of National Health and Welfare, apparently in contravention of the Acts and regulations governing family allowances, old age security and old age assistance. No statistical data was provided to us. However, as indicated in Part III, Chapter 5 of our Second Report:

> . . . four cases were reported in which approaches were made by the Force to the Family Allowances Division other than in regard to the administration of the Family Allowances Act.
>
> (i) In an investigation of the abduction of a seven-year-old child, the approach was made to determine whether a new application had been made for family allowance in regard to the abducted child. The Department advised that no new application had been made. (The mere disclosure that an application had or had not been made would not be prohibited).
>
> (ii) In 1970 co-operation was received in regard to a murder investigation. No further details were given.
>
> (iii) A contact was made with the local office in an investigation under the Immigration Act. No further details were given.
>
> (iv) A request was made in a fraud investigation. It does not appear that any information was given out, the disclosure of which would be prohibited.

Conclusions and recommendations

20. We recommend that Exhibit N-1 be referred to the Attorney General of Canada, as well as the relevant parts of our Second Report, and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents reported to us. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

CHAPTER 4

SPECIFIC MAIL CHECK CASES

INTRODUCTION

1. In Part III, Chapter 4, of our Second Report we set out both the extent and prevalence of mail check operations on the C.I.B. and Security Service side and the legal issues involved in relation to such mail check operations. In discussing the extent and prevalence of the practices, we considered the Security Service and the C.I.B. separately. We shall make the same division here.

2. Evidence with respect to mail check cases was received by us in public and *in camera* in 1977 and 1978.

3. As the number of incidents of mail check operations, as disclosed to us by the R.C.M.P., exceed 1,000 for the period of 1970-77 alone, the focus of our inquiry into this practice was on its "extent and prevalence", not on the details of individual cases. Several specific cases were described to us in oral testimony, by way of examples of the circumstances in which the technique was used. Even in those cases time did not permit us to hear all of the relevant evidence.

A. SECURITY SERVICE

Summary of facts

4. The Security Service had three categories of mail check operations, under the code words Cathedral A, Cathedral B and Cathedral C. The categories were described in a Security Service memorandum (Ex. B-16) as follows:

> *Cathedral "A" — routine name or address check* [recording in longhand information from the outside of envelopes].
>
> *Cathedral "B" — intercept (photograph or otherwise scrutinize by investigator) but do NOT open* [the outside of envelopes was photographed]
>
> *Cathedral "C" — intercept and attempt content examination*

5. The information provided to us by the Security Service disclosed that from November 1970 to the end of December 1977 there were 91 completed mail check operations, of which six were Cathedral A cases, 19 were Cathedral B cases and 66 were Cathedral C cases. Details as to the province in which each operation took place, the identification of the target, the date of the operation and the Security Service file number are all contained in a summary of the cases filed with us as Exhibit BC-3. Further details were provided to us by the

Security Service on all these operations and we have given the Clerk of the Privy Council, on behalf of the Governor in Council, those additional details. In addition, details of one case, the Omura case, are found in Volumes 8, 18 and 23 of the transcripts of our hearings.

Conclusions and recommendations

6. For reasons which are given in our Second Report, we are satisfied that, in each instance in which mail was opened by the Security Service, an offence may have been committed under section 58 of the Post Office Act. Similarly, for reasons given in that Report, in each of the Cathedral A and B cases it is less clear whether there was an offence pursuant to section 58 of the Post Office Act. In this latter regard we said in Part III, Chapter 4, of our Second Report, the following:

> (a) Examining the exterior of an envelope (what the Security Service has called Cathedral 'A') might be unlawful if the length of time it is taken out of the mail stream results in its being "detained" or "delayed". Even if that were not so on the facts of most situations, it might be argued that a civil wrong is committed by interfering in the ownership of the article of mail, but this is doubtful. On balance, we do not believe that this investigative practice, if it does not involve removing the article from the mail stream for any significant length of time, can be said to be an activity "not authorized or provided for by law". This is particularly our view if the article of mail remains at all times in the control of a postal employee. Our view is the same as that of the Director of the Legal Service Branch of the Post Office, given in December 1977 . . .
>
> (b) The same remarks apply to photographing the exterior of an envelope (what the Security Service has called Cathedral 'B').

7. We recommend that all the cases summarized in Exhibit BC-3 be referred to the Attorney General of Canada who should have members of the Department of Justice conduct such an investigation as he considers necessary, including a review of the R.C.M.P. files with respect to those cases. Upon completion of the investigation the Attorney General of Canada should determine, in each case, whether a prosecution is warranted under all the circumstances.

B. C.I.B.

Summary of facts

8. The criminal investigations side of the Force did not use a code name for mail check operations. It conducted operations similar to those which were carried out by the Security Service under the code names Cathedral A, B and C. In addition, the C.I.B. undertook controlled delivery of the mail, a system whereby the delivery to the addressee was made either by a member of the R.C.M.P., posing as a postal employee, or by a postal employee delivering it at a time pre-arranged with the R.C.M.P.

9. The statistics provided to us with respect to mail check operations for the years 1970-1977 disclosed that there were 954 mail check operations, of which

799 involved the opening of pieces of mail. However, these figures cannot be relied upon because of differences in interpretation, by those reporting at the division level, of the definition of "letter", "first class mail", "post letter" and "delivered".

Conclusions and recommendations

10. In the testimony before us on this subject, some details were given with respect to six operations. With regard to these six cases, we recommend that the evidence and the R.C.M.P. files with respect to them be referred to the Attorney General of Canada who should have members of the Department of Justice conduct such an investigation as he considers necessary. Upon completion of the investigation the Attorney General of Canada should determine, in each case, whether a prosecution ought to be launched against the persons involved.

11. We also recommend that the Attorney General of Canada should examine the foregoing statistics provided to us and the R.C.M.P. files upon which they are based and determine whether prosecutions ought to be launched.

C. GENERAL CONCLUSIONS

12. The volume of cases of mail check operations on the Security Service and C.I.B. side of the Force is overwhelming. We have discussed them only in the light of possible violations of the Post Office Act. In each case there may also have been a trespass to the item of mail interfered with. We do not make light of that and in our opinion it ought to be brought home very clearly to members of the R.C.M.P. and of the security intelligence agency that such an interference with other persons' property constitutes a trespass and is therefore unlawful. However, because mail check operations were clearly a policy of the Force, we do not consider that those who planned and participated in specific cases should be punished by virtue only of the trespass involved.

CHAPTER 5

ATTEMPTS TO RECRUIT HUMAN SOURCES

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 6

THE MINERVE COMMUNIQUÉ

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 7

BURNING OF A BARN

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 8

REMOVAL OF DYNAMITE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 9

OPERATION BRICOLE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 10

OPERATION HAM

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

CHAPTER 11

MATTERS CONCERNING AN UNDERCOVER OPERATIVE, WARREN HART

INTRODUCTION

1. Here we examine certain matters that arise from our inquiry into the use of Mr. Warren Hart as an undercover operative of the Security Service from 1971 to 1975.

2. Testimony was heard during public hearings held in 1980 on January 8, 9, 10, 15, 16 and 17, and April 22, 23, 24, 29 and 30. It is found in Volumes 143, 144, 145, 150, 151, 152, 178, 179, 180, 181 and 182. Testimony *in camera* was heard on April 30, 1980, and is found in Volume C92. In addition representations were made to us pursuant to notices given under section 13 of the Inquiries Act (Vols. C126 and C131).

3. Mr. Hart testified publicly before us, and we refer publicly to him in this Report, because his identity as a previous undercover operative of the R.C.M.P. had been disclosed by himself on television and admitted in the House of Commons and to the press by the Solicitor General, after Mr. Hart's own disclosure.

4. We inquired in depth into Mr. Hart's complaints, and other matters about which he did not complain but which were incidents in his career with the R.C.M.P. Certain issues he raised might not in themselves have merited the time devoted to hearings, but we considered others to be of substantial importance, either in themselves or as illustrations of policy problems.

5. One of the matters relating to Mr. Hart, his presence at a meeting held in December 1974 between the Honourable Warren Allmand and Roosevelt Douglas, is reported on in Part IV, Chapter 7. Another matter was his allegation made publicly that a murder had been committed. We interviewed Mr. Hart as to the extent of his knowledge of this matter and we immediately made a Special Report to the Governor in Council recommending that it be referred to the Attorney General of Ontario.

Summary of facts

6. In April 1971, at the request of the United States Department of Justice, Mr. Hart met Sergeant I.D. Brown of the R.C.M.P. in Washington, D.C. Mr. Hart understood from a member of the Department of Justice that the R.C.M.P. needed someone with expertise in infiltrating black radical organiza-

tions. After Sergeant Brown consulted with R.C.M.P. Headquarters in Ottawa, the decision was made that Mr. Hart would go to Canada to work at a salary of $900 a month plus $100 a month to cover the expenses of a monthly visit to his family in Baltimore. There was no discussion about the payment of Canadian income tax. Mr. Hart entered Canada and went to Toronto where he again met Sergeant Brown, who told him that his target was Roosevelt Douglas and that he was to attend black meetings to obtain information covering the future plans of black extremists. Mr. Douglas was then in jail but when he was released Mr. Hart became, in Mr. Hart's own words, "his chauffeur, his bodyguard and his confidant". His R.C.M.P. "handlers", who gave him instructions and debriefed him regularly, were Sergeant Brown and Constable Laird. Four or five months after his arrival Mr. Hart first met Inspector James S. Worrell, who, he understood, was the officer in charge of matters involving himself. In fact, it appears that Inspector Worrell, who was in Toronto, was at the time not really in charge, for Sergeant Brown was receiving instructions from Headquarters in Ottawa.

7. Later Mr. Hart's salary was increased to $1300 a month. This occurred because Mr. Hart had returned to Baltimore in 1972, having decided not to continue to work for the R.C.M.P. Messrs. Brown and Laird went to see him there and offered him the increase together with insurance coverage and fringe benefits, as a result of which Mr. Hart agreed to resume his work in Canada.

8. What was the R.C.M.P.'s assessment of Mr. Hart's services? Chief Superintendent Begalki confirmed in testimony that in February 1973, he recorded that Mr. Hart was "sharp and intelligent" and that Mr. Begalki considered that the not inconsiderable faith Mr. Hart had in his own abilities made it possible to survive in a very dangerous milieu. As of 1973 Sergeant Plummer, who succeeded Sergeant Brown as Mr. Hart's principal handler, considered that Mr. Hart was performing his job well. As late as the fall of 1975 Sergeant Plummer thought so highly of Mr. Hart's usefulness that he wanted Mr. Hart to accompany Mr. Douglas on a trip across Canada. Inspector Worrell testified that Mr. Hart performed excellent work for the R.C.M.P. at times and that at other times his conduct was a matter of concern, but that generally speaking his efforts were quite good, especially in 1972 and early 1973. Inspector Worrell testified that he formed the opinion that Mr. Hart was "a sand lot thug", "an egomaniac", and a man whose ego was "giant-sized"; this opinion was based on reports he received, as Inspector Worrell did not deal with Mr. Hart personally.

9. We turn now to a discussion of the following specific issues:

(a) The arrest and deportation of Mr. Hart in December 1971;

(b) The entry of Mr. Hart into Canada initially, and his return to Canada after his deportation;

(c) Surreptitious entry and reading mail;

(d) The cache of firearms;

(e) Kenora;

(f) Mr. Hart's contacts with native people in British Columbia;

(g) Taping of a meeting of the N.D.P. provincial caucus in British Columbia;

(h) Mr. Hart's presence when Roosevelt Douglas met John Rodriguez, M.P.;

(i) Mr. Hart's associations with the underworld;

(j) The border incidents;

(k) The decision to terminate Mr. Hart's employment;

(l) The termination of Mr. Hart's employment;

(m) Was Mr. Hart offered permanent employment?

Specific issues

(a) The arrest and deportation of Mr. Hart in December 1971

10. In December 1971, the R.C.M.P. decided, with Mr. Hart's concurrence, to have Mr. Douglas and Mr. Hart arrested, jailed and deported under the Immigration Act. It was intended that Mr. Hart would return to Canada a few weeks later, and he did in fact return in January 1972 to resume his work for the R.C.M.P.

11. According to Mr. Hart, he understood that the purpose of the plan to deport Mr. Douglas and himself was to enhance Mr. Hart's "cover" and to increase his credibility among black radicals. However, Security Service documentation at the time and the testimony of R.C.M.P. witnesses establish that there was a more urgent reason. Sergeant Brown testified that the plan to arrest Mr. Douglas and Mr. Hart was developed in order to defuse a plot to place a bomb at Sir George Williams University and to kill two professors there. In order to defuse the plot and "pull" Mr. Hart out of the situation it was decided that it was necessary to have him arrested and deported.

12. Sergeant Brown told us that the instructions given to Mr. Hart were that he was to admit to the arresting R.C.M.P. officers that he had overstayed his visiting privileges and had been a member of the Black Panther Party in the United States. Sergeant Brown says that he instructed Mr. Hart to be co-operative with the Immigration officer and admit that he had overstayed and had been a member of the Black Panther Party, but that there was no instruction given to admit to a criminal record. Sergeant Brown stated that Inspector Begalki authorized him to have Mr. Hart admit that he had been illegally in Canada as a visitor. It was not expected that Mr. Hart would disclose to the Immigration officer conducting the inquiry that he had come into Canada to work for the R.C.M.P. That would have been quite contrary to the willingness of the Force to admit the identity of a source. Sergeant Brown testified that he expected that if Mr. Hart were asked whether he had been employed in Canada, he would not tell the truth.

13. Pursuant to the plan previously described, Mr. Hart and Mr. Douglas were arrested on December 8, 1971, in Toronto. According to Mr. Hart, Sergeant Brown told him that there would be an Immigration Inquiry, and that he was to tell the inquiry officer about his background and his arrest record, and that he "was a subversive in Canada" and make himself appear to be as

bad as possible. Mr. Hart testified that the record of arrests which he disclosed to the inquiry officer had in fact been the result of his being arrested during demonstrations in which, to maintain his cover while he was an undercover agent with the F.B.I., he had participated. Mr. Hart told the inquiry officer that he had been convicted of assault and battery and possession of a firearm, but he claimed to us that he had not in fact been so convicted. He told us that he had told the inquiry officer that he had been convicted in order to make himself look bad so as to ensure his deportation. He also admitted to the inquiry officer that he had come to Canada to stay, even though he had entered Canada as a visitor. As a result he was ordered deported, and was driven to the international border. By that time he had spent five days in custody. He was ordered deported on the ground that, contrary to section 18(1)(e)(vi) of the Act, he had entered Canada as a non-immigrant and remained, said the order, "after ceasing to be a non-immigrant and to be in the particular class in which you were admitted as a non-immigrant".

14. Mr. Hart understood that the inquiry officer did not know of his arrangements with the R.C.M.P. and was being misled, but that a senior officer in the Immigration Department knew what was going on. Chief Superintendent Begalki testified that, to the best of his recollection, Immigration officials were aware of the plan, but that he does not know whether the inquiry officer knew of it. Mr. Begalki told us that he expected that the inquiry officer would know all the facts, including Mr. Hart's association with the R.C.M.P. Mr. Begalki stated that the senior Immigration official with whom he discussed the matter led him to believe that he "would communicate on a parallel line with his people". Mr. Begalki also told us that he believes that the senior Immigration official felt that the facts of the deportation procedure would be communicated upward in the Department and that the Minister would "remove the order".

15. The senior Immigration official did not testify on this matter but was interviewed by our counsel. He stated that he was fully briefed by the R.C.M.P. in late November or early December 1971 as to the past and proposed activities of Mr. Hart for the R.C.M.P. He knew of the plan to deport Mr. Hart and Mr. Douglas. The plan was not documented, but the need to defuse the plans to kill two university members by deporting Mr. Douglas and Mr. Hart was explained in detail on December 3, 1971, by Assistant Commissioner Parent in a letter to the senior Immigration official. That official said that he is fairly certain that the inquiry officer was briefed before the Immigration hearing. The inquiry officer was interviewed by our counsel after all our hearings and stated firmly that he did not know of Mr. Hart's involvement with the R.C.M.P. or of the plan to have Mr. Hart deported. He said that he first knew of Mr. Hart's involvement with the R.C.M.P. only recently when this matter appeared in the press. We have no reason to doubt his statement.

16. According to a memorandum dated February 24, 1978, from the Deputy Minister to the Minister of Manpower and Immigration, the senior Immigration official

> recalls that the proposed line of action was discussed and agreed to with Senior Management and the Minister, the Honourable Otto Lang.

However, there is absolutely no other documentary evidence that supports that statement and we do not accept it.

17. From our counsel's interview with the senior Immigration official it would appear that that official was generally aware that the R.C.M.P. were party to the practice of having foreigners present in Canada on security intelligence work from time to time, even though the R.C.M.P. did not advise Immigration every time Mr. Hart entered Canada.

18. According to a memorandum from the Deputy Minister of Manpower and Immigration to his Minister, dated February 21, 1978, Superintendent Chisholm and Chief Superintendent Begalki

> advised officials of this Department that Hart was providing information to the RCMP on Roosevelt Douglas and other black extremists in Canada

and that one of the two Immigration Department officials so advised

> recalls that early in 1972 John Starnes, Director General, Security Service, did in fact brief the ADM Immigration who later briefed the Deputy Minister and Minister.

In another memorandum dated February 24, 1978, the Deputy Minister advised the Minister that, according to the same senior official, Mr. Starnes' visit to the Immigration Commission followed the receipt in May 1972 of Mr. Hart's application for temporary admission to Canada to study at Atkinson College in Toronto. The memorandum continued:

> As far as [the senior official] can recall, Mr. Starnes requested that our Commission refrain from taking enforcement action against Mr. Hart for "at least two weeks" as he was engaged in a number of sensitive and important matters.

19. On November 5, 1976, the Director General, Recruitment and Selection Branch, Canada Immigration Division, wrote to Mr. Hart as follows:

> I have been asked to reply to your letter of October 3, 1976, referred from the office of the Prime Minister, concerning your desire to be admitted to Canada for permanent residence.
>
> I have noted with interest the contents of your letter. On reviewing our file, however, I note that you were deported from Canada on December 9, 1971, and at that time you admitted to a conviction in the United States in 1953 for assault and battery. As assault and battery is considered a crime involving moral turpitude, it places you within a statutory prohibited class, paragraph 5(d) of the Immigration Act.
>
> In view of the above, I am sorry to have to tell you that your admission to Canada either as an immigrant or non-immigrant (visitor) is prohibited and we are, therefore, unable to accede to your request.
>
> (Ex. Q-11.)

Mr. Hart denies that he was in fact ever convicted of such an offence.

Conclusion

20. We raise no legal issues in regard to this episode. Our purpose in narrating it is to establish as clearly as possible what occurred, as this has a bearing on Mr. Hart's immigration status.

(b) The entry of Mr. Hart into Canada initially, and his return to Canada after his deportation

[This section, consisting of paragraphs 21 to 24, is not being published at this time, pending possible legal proceedings against a member of the R.C.M.P.]

(c) Surreptitious entry and reading mail

25. Mr. Hart told us that on one occasion he entered a friend's apartment without his knowledge in order to obtain access to some mail which the friend had received. [The balance of our Report on this matter, consisting of the remainder of paragraph 25 and paragraph 26, is not being published at this time, for reasons, given in Part VIII, relating to the possibility of prosecution of a member or members of the RCMP.]

(d) The cache of firearms

[This section of this chapter, consisting of paragraphs 27 to 34, is not being published, pending possible legal proceedings against members of the R.C.M.P.]

(e) Kenora

35. Mr. Hart accompanied Mr. Douglas to Kenora, Ontario in 1974 when Anicinabe Park at Kenora was occupied by some Indians and the Security Service thought that an attempt was being made to associate the native Indian cause with the Black cause. In his testimony Mr. Hart denied having given instruction to the native people on the manufacture of bombs, although he said that the general idea of bombs was discussed. He said that he met "several so-called Indian leaders" at Kenora and was introduced as "the General, the one who could instruct them in the expertise of weaponry and demolition", and that he "learned of a cache of weapons that had been brought into Kenora for the next uprising that they were going to have". He denied having given any advice in Kenora as to how to fabricate bombs. He denied having, at Kenora or anywhere else in Canada, supplied anyone with weapons, or having counselled anyone as to how to procure bombs, grenades or other explosives.

36. Mr. Hart testified that he does not recognize the name Donald R. Colborne of Thunder Bay. Mr. Colborne is a lawyer in that city. In January 1979, Mr. Colborne made a statutory declaration in which he stated that on or about June 30, 1975, he met a man who was accompanying Roosevelt Douglas. From the facts given by Mr. Colborne it is evident that the man, whom he knew as "the General", was Mr. Hart. According to Mr. Colborne, the man "several times stated that he intended to steal weapons from persons in Thunder Bay", and "Boxes of grenades and other military-style weapons were referred to". Mr. Colborne says that the man "tried to incorporate me into his plan by enquiring if I would provide a safe place to cache the weapons after they had been stolen". Mr. Colborne says that he "declined to do so". Mr. Colborne says also that he does not know whether or not any weapons were actually stolen by "the General". We did not call Mr. Colborne as a witness. We assumed that if he were to testify, he would say what he said in his

statutory declaration. We did ask Mr. Hart about Mr. Colborne's allegations. Mr. Hart denied having indicated in Thunder Bay that he intended to steal weapons or explosives, or having asked about a safe place to hide explosive devices or weapons in Thunder Bay.

37. Sergeant Plummer confirmed that Mr. Hart's instructions were that, in order to "get next to" the targets, he was, with the R.C.M.P.'s approval, to claim to be an expert in demolition and weaponry.

Conclusion

38. Neither in the testimony nor in our review of the R.C.M.P. files concerning Mr. Hart is there any basis to question Mr. Hart's account of the events. Even if Mr. Colborne's allegations are accurate, Mr. Hart's words and conduct would not amount to offences.

(f) Mr. Hart's contacts with native people in British Columbia

39. Mr. Hart acknowledges that, while accompanying Roosevelt Douglas to Vancouver, British Columbia, he met one Gary Cristall. Mr. Cristall swore an affidavit in November 1978 in which he stated that he met Mr. Hart, whom he knew as "Clay Hart" and "the General", in the spring of 1975, and that in August 1975 he travelled with Mr. Hart and Roosevelt Douglas, in Mr. Hart's automobile, from Vancouver to the Mount Currie Indian Reserve. There, he said, during discussions with "several native persons, including Mount Currie band members and members of the American Indian Movement (A.I.M.) concerning fishing and hunting rights and land claims", Mr. Hart "claimed that he had American military experience as a paratrooper and that he was an expert in explosives". Mr. Cristall stated that Mr. Hart said he

> could provide unlimited supplies of high quality military equipment, including AK-47 automatic rifles, dynamite and plastic explosives

and that he

> volunteered to train the native people that he met at Mount Currie in the use of dynamite and other types of explosives.

We did not call Mr. Cristall as a witness. He was interviewed by one of our investigators and we reviewed the transcript of the interview. We also read a short chapter from a book by Richard Fidler, "R.C.M.P.: The Real Subversives", which Mr. Cristall told our investigator was based on his experience with Mr. Hart. From all this it was clear that Mr. Cristall, if called to testify, would not be able to go beyond what he stated in his affidavit. Mr. Hart testified that, while he had met Mr. Cristall, the latter was not at the Mount Currie Indian Reserve when Mr. Hart and Mr. Douglas were there. The contradiction between the two is of no importance to the issue whether Mr. Hart, as an agent of the R.C.M.P., did anything that was unlawful. Assuming everything in Mr. Cristall's affidavit to be true, there is nothing unlawful in what he alleges Mr. Hart said at the Reserve. It thus becomes immaterial whether Mr. Hart was accurate or not when, in his testimony, he told us that he did not meet Mr. Cristall at the Mount Currie Indian Reserve.

40. At the Reserve Mr. Hart discussed training Indian people at two proposed campsites, but the camps were not set up. Mr. Hart said that they did not have the time to have any discussion about weapons and denied that he told any Indians that he could provide unlimited supplies of high quality military equipment, including AK-47 automatic rifles, dynamite and plastic explosives. According to Mr. Hart, during this western trip Corporal McMorran debriefed him in Regina and Sergeant Plummer met him in Vancouver. Sergeant Plummer, however, denied that he travelled at all in connection with that trip of Mr. Hart.

Conclusion

41. Neither in the testimony nor in what is alleged in the affidavits is there any indication that Mr. Hart committed an offence or that there was any conduct by the R.C.M.P. members that is open to criticism.

(g) Taping of a meeting of the N.D.P. provincial caucus in British Columbia

42. Mr. Hart testified that Sergeant Plummer and Corporal McMorran knew in advance that Mr. Hart would be attending a meeting between Mr. Douglas and members of the British Columbia provincial caucus of the New Democratic Party.

43. Mr. Plummer stated that he has no memory of a recording of such a meeting but remembers that the meeting was reported on. In later testimony he said that he possibly did know, in advance, of the proposed meeting. He said that if he had known in advance that Mr. Hart was going to be present at such a meeting he, Plummer, would have had "no compunction" about Mr. Hart being present. He left any ethical questions arising from tape recording Ministers and political parties to his superiors.

44. Mr. McMorran testified that Mr. Hart recorded the meeting openly, with a standard tape recorder on the table, and that it was simply a tape of the speech made by Mr. Douglas. Mr. McMorran confirmed that he was aware in advance that Mr. Hart was going to attend the meeting. It was Mr. McMorran's understanding that the meeting would not be private.

Conclusion

45. There is no evidence that Mr. Hart committed any offence. Moreover, the evidence indicates that the recording was made openly. We consider that there is nothing in his conduct or that of members of the R.C.M.P. that is open to criticism.

(h) Mr. Hart's presence when Roosevelt Douglas met John Rodriguez, M.P.

46. Mr. Hart says that Sergeant Brown knew in advance that Mr. Hart was going to be present at a meeting between Mr. Douglas and Mr. John Rodriguez, a Member of Parliament.

47. Sergeant Plummer, who was Mr. Hart's handler from the summer of 1973 until November 1975, testified that he did not authorize a taping of a conversation between Mr. Douglas and Mr. Rodriguez. He remembers only seeing the name of Mr. Rodriguez in a report.

48. Corporal McMorran was one of Mr. Hart's handlers from November 22, 1974, to the end of 1975. He testified that he does not recall whether Mr. Hart reported having taped Mr. Rodriguez, and he testified that he was positive that Mr. Hart did not give any such tape to him. However, Mr. McMorran did know in advance that Mr. Hart was going to be driving Mr. Douglas and Mr. Rodriguez. Mr. McMorran testified that he believes that Mr. Hart indicated that there was nothing noteworthy to report.

49. Mr. Hart testified that the recording was made with apparatus that was built into his car. But Mr. McMorran testified that the meeting with Mr. Rodriguez took place in 1975 and that there was no recording equipment in the car Mr. Hart had during that year.

Conclusion

50. No offence was committed because Mr. Hart must be considered to have been a party to the conversation, and his consent to the taping prevented it from being unlawful. However, we note that he was present at the meeting between Mr. Douglas and a Member of Parliament without the Solicitor General being notified, even after the event, that an R.C.M.P. undercover source had been present and had reported to the R.C.M.P. on the meeting. As with the meeting between Mr. Douglas and Mr. Allmand (the more so in the latter case because Mr. Allmand was the Minister who reported to Parliament concerning the R.C.M.P.), we consider it unacceptable that members of the R.C.M.P. should allow that to happen.

(i) Mr. Hart's associations with the underworld

51. Mr. Hart necessarily developed a "cover" story to explain the fact that he had money. As he had met an underworld figure while in jail in Toronto awaiting deportation, Mr. Hart testified that his R.C.M.P. handlers decided that he should develop an apparent connection with the underworld. Mr. Hart claimed to have reported to his R.C.M.P. handlers all the requests that underworld figures put to him. He told us that he did not carry out these requests, and that his handlers instructed him not to participate in anything that was unlawful. Mr. Hart asserted that his R.C.M.P. handlers knew of his use of his association with criminal elements as a cover, and that his handlers did not tell him to cease such association or that he was not following instructions.

52. Sergeant Brown testified that Mr. Hart was never involved in criminal activities, and that Mr. Brown had authorized Mr. Hart's association with the criminal whom he had met while in jail in order to promote Mr. Hart's "cover" by developing an apparent explanation for Mr. Hart's income. Corporal Laird, who backed up Sergeant Brown as Mr. Hart's handler from December 1971

until July 1973, told us that he knew of no criminal activities of Mr. Hart other than the border incident (if, we might add, it is in any way criminal).

53. On one occasion, after a mail robbery in Toronto, radicals turned over some cheques to him, and he gave them to Mr. McMorran. He was criticized by the R.C.M.P. for having received the cheques. A similar incident occurred with regard to stolen credit cards, and he was again criticized for receiving them. His handlers did not want to run the risk of having to expose Mr. Hart's true identity by his being called as a witness in any criminal prosecution.

54. Chief Superintendent Begalki testified that at a meeting in Ottawa in February 1973 he told Mr. Hart in detail that he "must refrain from getting involved with criminal intelligence and that if he followed these instructions and guidelines that employment would probably be much longer than if he got involved in any criminal intelligence collection with prosecutions following et cetera".

55. Mr. McMorran testified that, other than the border incidents and the matters of the stolen cheques and credit cards which Mr. Hart received and turned over to his handlers, he knew of no "other" criminal activity in which Mr. Hart was involved. Mr. Brown testified that Mr. Hart had a particular dislike for drugs, and therefore he expressed doubt that Mr. Hart would ever become involved with illicit drug traffic unless as a pretext for a job he was working on.

56. Inspector Worrell acknowledged that Mr. Hart's cover, to provide an apparent explanation for his income, was his association with Mafia types. However, Inspector Worrell told us that he thought that Mr. Hart "at times expanded beyond the cover role unnecessarily". As of March 1974 Inspector Worrell felt that Mr. Hart had co-operated in regard to his instructions to keep the criminals at arm's length. Then Mr. Hart was reprimanded for having received the stolen cheques although he had been told to "stay clear and stay away", but Inspector Worrell acknowledged that the reprimand was given simply because he had become involved; there was no suggestion that Mr. Hart was involved for personal reasons or motives, but rather his object was to bring them to his handlers.

57. Inspector Worrell told us that he had had the feeling that Mr. Hart was not playing square with the R.C.M.P. at all times. However, as Mr. Hart was handled by Headquarters and was not under Mr. Worrell's control in Toronto, Mr. Worrell did not have "the contact". Mr. Worrell said his attitude was based on instinct and not on facts. He testified that he began to have these feelings in or about 1973 — "some time around the cheque incident or the Italian crossing". (We note that the "Italian crossing" — the border incident — was in May 1973; the cheque incident was in January 1975).

58. Mr. Hart's aggressiveness about reporting intelligence concerning criminal activities — a characteristic that, as we have observed, concerned his handlers because it made his exposure more possible — was evidenced by a September 25, 1974 memorandum for file, by Sergeant Plummer (Ex. Q-23). It recorded that another Canadian police force had been receiving criminal

information from Mr. Hart, without his expecting remuneration, for a period of five months, and that the officer of the other police force reported that Mr. Hart

> claimed to be extremely frustrated in the manner in which we treat criminal info. that he comes across in the course of his security service duties and expressed a genuine interest in helping to rid the city of the undesirable element.

A brief prepared for us by the R.C.M.P. on April 18, 1978, stated:

> It had been established that Hart was a most difficult source to handle and failed to follow direction and accept guidance. It was agreed that Hart should claim to have criminal associations, to account for his life style, but it was never intended that he should cultivate them. Hart was repeatedly told not to become involved in any criminal activity, instructions he chose to ignore. Hart did associate with the criminal element, and on at least four occasions, reported to his handlers criminal matters, none of which resulted in criminal prosecutions.
>
> Efforts were made to use this intelligence for criminal prosecution purposes, but this was never possible, as Hart became too close to the activity and would have been exposed if prosecution had been initiated. All handlers of Hart identified that he could not be relied upon and was frequently becoming involved in activities he was told not to become involved in, and was not always truthful.

This paragraph, we think, captures the essence of what was evidently felt by Security Service officers such as Inspector Worrell and Assistant Commissioner Sexsmith. We have no doubt that they were genuinely concerned and exasperated by Mr. Hart's apparently unrepentant willingness to collect criminal intelligence and thus run the risk of his identity being exposed. We believe that their concern in this regard was an honest and genuine one, and we refrain from passing judgment on whether they were right or not.

59. We do not, however, agree that the testimony before us, and the files we have examined, support the following statement in the foregoing brief: "Hart was repeatedly told not to become involved in any criminal activity, instructions he chose to ignore". If that statement implies that he committed crimes, it is an inference which is not supported by the evidence.

60. We also disagree with the brief's statement that "Hart did associate with the criminal element". That statement appears to imply that such "association" was contrary to instructions and that all he was supposed to have done was to "*claim* to have criminal associations. . . but it was never intended that he should cultivate them". (our emphasis). He *was* permitted to "associate" with such people, and his doing so was not contrary to instructions.

Conclusion

61. We are satisfied by the testimony and our review of the R.C.M.P. files that Mr. Hart's association with underworld figures was generally approved of by his R.C.M.P. handlers as a suitable "cover" for his otherwise inexplicable station in life. It is evident that from the beginning, or at least from 1972

onward, at least one R.C.M.P. officer (Inspector Worrell) disapproved of the cover, and that, at least toward the end of Mr. Hart's association with the Force, Inspector Worrell was joined by others in being displeased by some of Mr. Hart's activities arising from this association. However, we are satisfied that their concern was not that he might be performing criminal acts, but that his coming into possession of evidence of crimes committed by others and his desire to deliver the evidence to the R.C.M.P. risked his true identity and thus his usefulness to the Security Service.

62. As we have indicated, we do not find any facts at all that show that Mr. Hart committed any offence in regard to these associations.

(j) The border incidents

63. One of the requests Mr. Hart received from his underworld acquaintances was to smuggle an underworld figure across the border into the United States. The resulting events occurred on May 18, 1973. Mr. Hart told us that, before driving the person to the border, he tried to contact his R.C.M.P. handlers, but without success. Therefore, he stated, he wrote a note on a piece of stationery which said, in effect, that he had a man in the trunk of his car. The note, which was later produced as an Exhibit (Ex. Q-26), bore the words: "Please let me speak to someone in charge" and "I have a man in the trunk". He then drove to a point near the border at Niagara Falls and the man got into the trunk. When Mr. Hart reached the border he passed the note to an American official and told him to read it. The official then opened the trunk and discovered the passenger. During questioning, Mr. Hart asked the American officials to telephone Sergeant Brown in Toronto. They did, and the result was that Mr. Hart was freed and returned to Toronto.

64. Mr. Hart's account of this matter is verified by independent documentary evidence, consisting of a report of an investigation conducted within the Immigration and Naturalization Service of the United States Department of Justice. No reference was made to this document at the time of our hearings into this matter because, although we had access to it, we did not have permission from the United States agency in question to refer to it. The R.C.M.P. have, since our last hearings into the matter, communicated to us that "the American authorities have now declassified the material", subject to certain deletions, and "have requested that the report be restricted to *in camera* hearings". From this we infer that the American authorities have no objection to our quoting from the report in our Report to the Governor in Council but that they would have objection to its publication. Consequently we would quote from it if there were any need to do so, but not for publication. However, we think that it is not necessary to quote from the report, and that it is sufficient to state our conclusion, namely, that Mr. Hart's account is corroborated by the report in all material respects.

65. In a memorandum dated March 3, 1978, the Deputy Minister of Manpower and Immigration gave advice to his Minister as to whether Mr. Hart "had been engaged in smuggling aliens (in particular, a Mr. Juan Ferdinando Melito) across the Canadian/U.S. border", that being a question which had

been put to the Solicitor General in the House of Commons on February 27, 1978. The memorandum recorded that two letters had been sent to Mr. Blais on February 28 and 29, based on file review. The memorandum then recorded that the Acting Director of the Intelligence Division of the Immigration Commission had been informed by the R.C.M.P. that

> — On May 18, 1973, Hart attempted to smuggle Melito into the U.S.A. at Niagara Falls. Melito had been secreted in the trunk of Hart's automobile.
>
> — U.S. Immigration officials discovered Melito in Hart's automobile. A "fuss" ensued until Hart was able to make telephone contact with his "handlers". The U.S. authorities then permitted Hart to proceed; Melito was turned back to the Canadian side.

This information was, of course, wrong and thoroughly misleading. We do not know whether the Chief Superintendent who provided the information knew the true facts, or whether he accepted as true what some other member of the R.C.M.P. had told him. It was equally misleading to state, in an Aide-Mémoire that accompanied one of the letters to Mr. Blais that "source attempted to smuggle an illegal alien into the U.S. in May 1973" as "support" for the "contention" that he "may well have been involved with the criminal element in Toronto for personal gain".

66. The memorandum also recorded that the Chief Superintendent "indicated that Hart had smuggled an Italian National, one Attilio Agostino, into the U.S.A. from Canada in 1971". The information in the R.C.M.P.'s file shows that too is a misleading statement. The file shows that on August 2, 1973, Sergeant Plummer reported to Headquarters on this matter (Ex. Q-23). He reported an interview with Mr. Hart, conducted by American officials, and he referred to a "brief" that the R.C.M.P. had received from an American agency (which we have read). His conclusion at that time, which in our view is supported by the American "brief", was that Mr. Hart's account was factual. The story told by Mr. Hart, essentially, was that he had carried Agostino across the border to the U.S.A. at Windsor in March 1971, but that this had been done with the full knowledge and approval of United States officials at the border, who hoped thereby to further an important investigation into narcotics. However, it is not possible for us to be unequivocal about this matter, for the information from the American agency which is on the R.C.M.P. file is based on a report made before the conclusion of the investigation by the American authorities.

Conclusion

67. We are satisfied that Mr. Hart did not "attempt to smuggle an alien" into the United States in May 1973, and that the evidence on the R.C.M.P. file tends to support Mr. Hart's contention that what he did in 1971 was not "smuggling" because it was done in co-operation with an American agency.

(k) The decision to terminate Mr. Hart's employment

68. On October 31, 1975, the decision to terminate Mr. Hart's employment was made at a meeting of Inspector Begalki, Inspector Mumby, Inspector

Worrell and Assistant Commissioner Sexsmith. Sergeant Plummer, who was Mr. Hart's handler from the summer of 1973 until the termination, said that the three major reasons for the termination were probably the border incident, the Allmand incident and the cheque incident. But a written report made in 1975 by Corporal Payette, reviewing the history of the relationship of Mr. Hart and the Security Service, did not refer to the Allmand incident as a consideration in deciding to dismiss Mr. Hart. Inspector Worrell testified that the Allmand incident was *not* one of the reasons for the decision to terminate. Sergeant Plummer testified that he was called to account for the Allmand matter and had to chastise Mr. Hart, but then retracted that evidence. He did, however, record in January 1975 that he had reprimanded Mr. Hart concerning the cheque incident.

69. Sergeant McMorran testified that in September 1975 the Department of Immigration discovered the illegal presence of Mr. Hart in Canada and on September 11 notified Sergeant McMorran, who in turn notified Headquarters. As a result, Mr. Sexsmith instructed that Mr. Hart leave Canada voluntarily in order to avoid arrest; a decision would then be taken as to what should be done.

70. Inspector Worrell explained that one reason for the termination related to Mr. Hart's abiding by directions given by his handlers. He said that a notion developed at Headquarters that when Mr. Hart was out of the country, activity by targets seemed to quieten down, and the people at Headquarters wondered "whether this was a sort of self-perpetuating thing that we were in". A second reason given by Inspector Worrell for the termination was that there was pressure from the Department of Immigration. According to Inspector Worrell, it was this that finally caused the decision to be made. The risks involved if Mr. Hart were arrested and the arrest became public were a matter of concern.

71. Chief Superintendent Begalki acknowledged that one of the reasons for reviewing Mr. Hart's status in the fall of 1975 was pressure on the R.C.M.P. from the Department of Immigration. There was an immediate risk that Mr. Hart would be arrested. He acknowledged that this was the principal concern. Other concerns were "the backdrop of the threat to which this man was targetted" — "there was a decline in activity"; "the problems that he was creating for his handlers to keep him out of criminal activities; the number of times they would have to intercede with the local police or other agencies; the whole question of whether he saw the threat down the road as requiring the employment of this man". In addition, according to Mr. Begalki, Assistant Commissioner Sexsmith stated that Mr. Hart's conduct in surreptitiously taping an interview with the Solicitor General "attests to his scruples". While Officer in Charge in Toronto, Mr. Sexsmith had argued against the employment of Mr. Hart, but this employment was supported by Assistant Commissioner Draper, Mr. Sexsmith's superior in Ottawa at the time. Mr. Sexsmith succeeded Mr. Draper in 1975 and was then in a position to implement the views which he had maintained about the use of Mr. Hart.

72. Confirmation of the importance of the interest expressed by Immigration officials in Mr. Hart, in provoking a review of whether his employment should

be continued, is found in Immigration files: a memorandum in the Immigration file, dated August 19, 1975, recorded that a Departmental intelligence officer in Toronto had been asked a few days earlier for information concerning Warren Hart. An Immigration intelligence officer in Winnipeg had reported on Mr. Hart's visit with Mr. Douglas to Winnipeg. The August 19 memorandum stated that Mr. Hart "had been the subject of a USINS report of June 9, 1975 in which he was described as having a criminal background and potentially dangerous". We have read the United States Immigration and Naturalization Service report of June 9, 1975. It reported that a "reliable source" had reported that Mr. Hart

> is engaged in smuggling Italian nationals into the U.S. from Canada. He allegedly conceals the aliens in the trunk of a Cadillac sedan with Maryland license ASN-510. Hart has been reported to be a member of the BLACK LIBERATION ARMY who is wanted in the U.S. for criminal offenses. Because of his affiliations and his possible criminal background, he should be considered dangerous.

We know how erroneous this report was, and we note that the Canadian Immigration file contains a note that the Toronto intelligence officer had contacted the F.B.I. and been advised that they had no record of any outstanding warrants.

73. The August 19 memorandum also stated that the departmental intelligence officer in Toronto had learned "that HART was a paid informer, in the employ of the R.C.M.P. and probably one or two U.S. police organizations". It then stated that on August 18 "it was learned that Hart had been ordered deported from Canada on 9/12/1971 and was thus illegally in Canada", and it continued: "R.C.M.P. sources in Toronto indicated most strongly that no Immigration action be taken against Hart . . . ". The memorandum noted "the seriousness of the case (i.e. — it is a case of great potential embarrassment for the Department and the Minister)" and that the Acting Director General of the Immigration Division had directed an Immigration official

> to contact the R.C.M.P. in Toronto in order to impress upon them the necessity for initiating discussions between the R.C.M.P. and this Department at the *highest level* regarding Hart. If the R.C.M.P. in Toronto were not willing to proceed in this matter [the official] was instructed to begin to proceed to take normal enforcement action against Hart, i.e. arrest Hart under the provisions of Immigration Act and proceed with deportation action.

Conclusion

74. There was no impropriety on the part of any member of the R.C.M.P. in regard to the process by which the decision was taken to terminate Mr. Hart's employment.

(l) The termination of Mr. Hart's employment

75. In the autumn of 1975 senior R.C.M.P. officers were considering whether Mr. Hart's services should be retained or terminated. Finally the decision was made to terminate. Inspector Worrell met Mr. Hart and advised him of the

decision. Mr. Hart testified that Mr. Worrell paid him $6,000 cash as severance pay. He stated that he deposited the $6,000 in his bank account. There is a receipt that is dated November 13, 1975, for $7,930, signed by Mr. Hart (Ex. Q-16), but he says that he does not recall having signed it. (Mr. Hart denies that he met Mr. Worrell on November 13, 1975. In this he is clearly incorrect). Nor, he says, does he recall having been presented with a receipt for that amount to be signed. Mr. Hart was alone with Mr. Worrell at the time. Mr. Hart denies having been paid that amount. Yet, Sergeant McMorran testified that Mr. Hart told him that Mr. Worrell had paid him $7,930, and Mr. Worrell testified that he paid him $7,930.

76. Mr. Hart says that on four or five occasions at the most during his years with the R.C.M.P. he signed blank receipts upon request. This, he understood, was to enable a correction to be made in regard to a receipt previously signed for the wrong amount. Such blank receipts were in the same form as Ex. Q-16.

77. When Mr. Hart returned to the United States he was unemployed for 18 months.

78. Sergeant Plummer testified that on December 16, 1975, the date Mr. Hart finally left Canada, he paid Mr. Hart another $1,668.00 and had Mr. Hart sign a receipt (Ex. Q-20). The money was to enable Mr. Hart to terminate his lease on an apartment in Toronto. Sergeant McMorran testified to the same effect. In addition he said that some other member of the R.C.M.P. had ascertained that it was not necessary for Mr. Hart to pay six months' rent, yet their superiors authorized the money to be paid to Mr. Hart to avoid further argument. This appears, from a reading of the file, to be correct.

Conclusion

79. We accept the evidence of Inspector Worrell as to the amount he paid to Mr. Hart. We do so despite the evidence to the contrary given by Mr. Hart. In this we are governed to a large extent by the existence of a receipt for the full amount signed by Mr. Hart. We have reached this conclusion with some difficulty in the light of Mr. Hart's testimony that, on occasion, he signed blank receipts.

80. We have already noted Inspector Worrell's instinctive attitude toward Mr. Hart. Similarly, Mr. Worrell stated that when he was in the course of terminating Mr. Hart's services on November 13, 1975, Mr. Hart told him that the deportation in December 1971 had been arranged because of operational needs, but Mr. Worrell, evidently unaware of the facts which support that proposition, thought that Mr. Hart was "possibly embellishing" the truth. We mention this only to illustrate that Mr. Worrell was not really familiar with the facts concerning Mr. Hart.

(m) Was Mr. Hart offered permanent employment?

81. According to Mr. Hart, in 1972, when plans were being made for a trip he was to make to the Caribbean with the authority of the Security Service, he went to Ottawa and there met Inspector Begalki. According to Mr. Begalki

and Sergeant Brown, the meeting was in February 1973. Mr. Begalki expressed satisfaction with Mr. Hart's work. They discussed the fringe benefits that had earlier been discussed in Baltimore, and, according to Mr. Hart, Mr. Begalki stated: "When this is over, we will give you a position as a civilian employee, with the R.C.M.P." According to Mr. Hart, he would be employed as a "coordinator". Mr. Hart says that Mr. Begalki promised to put a letter on his file to that effect, an that on subsequent occasions he was assured that that had been done. In his testimony, Mr. Hart denied that what Mr. Begalki spoke of was only the possibility of a job with the R.C.M.P. Mr. Hart testified that Mr. Begalki said that in the letter to be placed on his file "a job offer would be made, something like a recommendation; in other words, I was to receive a job upon the termination of that type of employment". He says he equated such a recommendation with an offer.

82. In a television interview in January 1978 Mr. Hart asserted that when Sergeant Brown and Constable Laird came to see him in Baltimore in 1972 there was a promise of "a permament job as a coordinator with the R.C.M.P". In cross-examination before us he admitted that that was incorrect.

83. Mr. Begalki confirmed in his testimony that there had been a discussion with Mr. Hart about long-term employment, pension plans and other matters, but his filed report indicates that the discussion occurred in Ottawa in February 1973. Mr. Begalki testified that the R.C.M.P. "could only cross the bridge for long-term employment after the first employment had ceased, and depending on the conditions of the day and his qualifications as they relate to the vacancies within the Force and the hiring practice of the Force, that the issue would have to be addressed at that time". Mr. Begalki said that he was sure that he told Mr. Hart "that depending on the vacancies within the Force and the Force's needs, we could then possibly match up his qualifications with any vacancies". He said that he would have used the words "civilian member" but that he does not recall using the term "coordinator". He said that in the discussion Mr. Hart indicated that he wanted some security because his family situation was producing stress. Mr. Begalki stated that he "certainly made it clear that the problems he raised would have to be carefully studied".

84. Mr. Brown, who retired from the R.C.M.P. in 1976, testified that he was present at the time of Mr. Begalki's discussion with Mr. Hart and that Mr. Hart was not promised a permanent position, although there was discussion about fringe benefits such as medical assistance and the payment of life insurance premiums. Mr. Brown testified that to the best of his recollection "Mr. Hart was advised by Mr. Begalki that there were positions available for security in the R.C.M.P. for civilian members from time to time, as approved by the Commissioner, and that sort of a rhetoric conversation". According to Mr. Brown, no offer of employment was made.

Conclusion

85. We accept the evidence of Chief Superintendent Begalki and ex-Sergeant Brown. It is supported by advice we have seen in R.C.M.P. Security Service policy files concerning the undesirability of holding out prospects of permanent

employment to sources, although we realize that there can be no certainty that that was always followed. We are aware that the Security Service have had some difficulty with this question and we suspect that on occasion language has been used which would make the prospect of long-term employment appear to be at least within the realm of possibility. However, it is so improbable that such a capable and knowledgeable member of the Security Service as Mr. Begalki would make such a promise or offer as Mr. Hart alleged, that we cannot accept Mr. Hart's allegation that it was. In any event, even Mr. Hart acknowledged that a "recommendation" was spoken of. We think that Mr. Hart was allowing himself to be misled if he treated language that spoke of a recommendation as if it were a promise or offer of long-term employment.

A general comment

86. There is one further matter upon which we shall comment. Mr. Hart may at some time wish to return to Canada either as a visitor or as a landed immigrant. If he should seek to do so, we invite the immigration authorities to take into account what we have said in this chapter. Our impression, based on reading the Force's files, is that within the R.C.M.P. there is a bias against Mr. Hart, resulting from his having spoken out publicly, and this may be the cause for what we perceive as a degree of unfairness in reports to the Solicitor General. We believe that a fair reading of Mr. Hart's R.C.M.P. file justifies the conclusion that he is not a criminal; that if he was convicted many years ago for assault, the insignificant amount of the reported fine is some indication that the matter was of slight degree; that he came to Canada at the request of the R.C.M.P.; that while in Canada for over four years he performed laudable service for the people of Canada. If he had shortcomings in regard to any of the specific matters we have discussed, those should be measured in conjunction with the value of the services he rendered.

CHAPTER 12

CHECKMATE

[This chapter is not being published at this time. See the Commissioners' note which follows the Introduction to Part VI.]

PART VII

EXECUTIVE POWERS IN REGARD TO PROSECUTIONS

A. OBSERVATIONS CONCERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE

1. It is not within our jurisdiction to advise the federal Attorney General or provincial attorneys general whether, in any particular situation, there should or should not be a prosecution, because that is a matter solely within the discretion of attorneys general. On the other hand, we do consider it appropriate to refer to factors that may emerge from the evidence before us, and to the principles that bear on the exercise of prosecutorial discretion. We shall refer to those principles for the benefit of the general reader.

2. The same principles may also be pertinent to our conclusions as to whether those R.C.M.P. members involved in particular acts, quite apart from prosecution, should be disciplined or even criticized in any way. There again, however, we emphasize that the discretion whether or not to initiate disciplinary proceedings rests entirely within the R.C.M.P., and it is not within our terms of reference to recommend discipline in particular cases. Before enumerating the principles involved, however, two points should be made.

3. The first is that as a general principle no man is above the law. When the persons concerned are police officers this principle requires particular attention. In *Regina* v. *Ormerod*[1] Mr. Justice Laskin (who was then a member of the Ontario Court of Appeal) said:

> In principle, the recognition of "public duty" to excuse breach of the criminal law by a policeman would involve a drastic departure from constitutional precepts that do not recognize official immunity, unless statute so prescribes: see *Roncarelli* v. *Duplessis*.[2] How far such immunity exists in the exercise of discretionary power not to prosecute is unknown to me; but even if it be considerable, the fact that it does not reside in a settled rule is a safeguard. Legal immunity from prosecution for breaches of the law by the very persons charged with a public duty of enforcement would subvert that public duty. The matter is, in my view, more grave in relation to the criminal law than it is in any consideration of immunity from civil liability where policemen may incur it while in the discharge of their official duties. I may mention here a suggestion that has been made to relieve them of personal civil liability but to make or leave their employers

[1] [1969] 2 O.R. 230 at 244.
[2] [1959] S.C.R. 121, 16 D.L.R. (2d) 689.

liable: see Mathes and Jones, Toward a "Scope of Official Duty" Immunity for Police Officers in Damage Actions.[3] There is no similar doctrinal basis for excusing personal criminal liability.

> The Criminal Code presently prescribes justification for policemen and others in a number of respects where they are proceeding to enforce the law, as, for example, by arresting offenders. This is designed as an aid to enforcement, and presumes that the enforcing officers are not themselves participating in the criminal activity that they are seeking to curb. Recognition of "legal lawlessness" is, however, something far different. It does not represent a value that fits into our system of criminal law; it would not amount simply to "setting a thief to catch a thief" because, whatever be the disaste for *agents provocateurs*, it would mean the abandonment of legal control over them which, as the cases show, has been exercised from time to time. . . .

4. In a statement made in the House of Commons on March 17, 1978, on the application of the Official Secrets Act, the Minister of Justice, the Honourable Ron Basford, said:

> Mr. Speaker, the second principle is that every citizen is subject to the law. One of the pillars of our system of government, dating back three centuries, is that neither the King nor any other person, be he a member of this House, a member of the government, a member of the press, or someone possessed of title or position, is above the law. The law should apply to all, equally. He who breaks it must bear the consequences.[4]

The Honourable Roy McMurtry, Attorney General of Ontario, speaking in the Legislature of Ontario on February 28, 1978, expressed the view that the authorities "must be scrupulous to treat all members of the community equally without any regard to their position". He also said:

> The holders of public offices will receive the same treatment under the law as the ordinary citizen, even though the consequences may be more injurious.[5]

5. The second point is that in a federal country such as Canada, when the actions of a national police force are under consideration, there is a need to strive for consistency in the approach to prosecution from one jurisdiction to another. If the act of a certain individual is being considered with a view to possible prosecution, and if his act was performed as part of the implementation across Canada of a centralized policy of the Force, fairness would require that in all provinces like cases be treated alike, so far as decisions to prosecute or not to prosecute are concerned. Consequently, in such cases some degree of consultation among attorneys general may be desirable.

6. A third introductory point that we must mention is that in deciding whether to prosecute, as the Attorney General of Canada, the Honourable Ron Basford, said in 1978, "there must be excluded any consideration based upon narrow, partisan views, or based upon the political consequences" to the attorney general or to others. He continued:

---

[3] (1965) 53 Geo. L.J. 889.

[4] Canada, House of Commons, *Debates*, March 17, 1978.

[5] Legislature of Ontario Debates, 2nd session, 31st Parliament, No. 3, pp. 50-2.

> In arriving at a decision on such a sensitive issue as this, the Attorney General is entitled to seek information and advice from others but in no way is he directed by his colleagues in the government or by parliament itself. That is not to say that the Attorney General is not accountable to parliament for his decisions, which he obviously is.[6]

As Sir Hartley Shawcross has said, in order that an attorney general may "acquaint himself with all the relevant facts", including "any. . . consideration affecting public policy",

> . . . he may, although I do not think he is obliged to, consult with any of his colleagues in the government, and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what the decision ought to be. The responsibility for the eventual decision rests with the Attorney-General, and he is not to be put, and is not put, under pressure by his colleagues in the matter. Nor, of course, can the Attorney-General shift his responsibility for making the decision on to the shoulders of his colleagues. If political considerations which in the broad sense that I have indicated affect government in the abstract arise it is the Attorney-General, applying his judicial mind, who has to be the sole judge of those considerations.[7]

Principles relating to the exercise of prosecutorial discretion

7. It is not our intention to review all relevant principles in depth. We intend only to refer in detail to certain principles that have a particular bearing on the kinds of factual situations that we have reported on.

(a) The first question that must be answered when a prosecuting authority is deciding whether or not to prosecute is whether evidence is available of the commission of an offence and there appears to be a reasonable prospect of a conviction. Consideration must be given to whether there are any insuperable or fatal defects to the case as a result of such legal issues as absence of jurisdiction, the expiry of a time limitation, or the inadmissibility of evidence. The prosecuting authority will consider what weight is likely to be given by the jury or judge to the evidence that is presented, and what likelihood there is that the evidence, upon being weighted, will be held to prove guilt. The prosecuting authority will be well aware that guilt must be proved beyond a reasonable doubt, not by a mere preponderance of evidence. If there are open issues of fact or law consideration must be given to whether they will probably be resolved in favour of the prosecution. This first consideration has been stated as follows:

> If the prosecutor exercising his discretion impartially concludes. . . that there is only the most tenuous foundation for the charge, it is surely

---

[6] Canada, House of Commons, *Debates*, March 17, 1978.

[7] As quoted by J.Ll.J. Edwards, *The Law Officers of the Crown* (1964), p. 223.

preferable to halt the prosecution at this pre-trial stage and not subject either the accused or the victim to the ordeal of a public trial.[8]

Another Crown counsel has written that

> To commence a prosecution or permit it to continue in the face of [the requirements of the law that the accused must be proved guilty "beyond a reasonable doubt"], where the evidence forthcoming is not such as is calculated to attain this standard, would be an abuse of discretion. It would amount to the launching of a "fishing expedition" in the hope that sufficient evidence would somehow turn up during the course of the trial. Such a procedure could not be held to meet the test of the principles which underlie the Bill of Rights.[9]

In many of the factual situations as to which we have reported in this Report, the evidence that has been available to us would or might not be available as part of the case for the prosecution. Frequently the evidence before us as to the conduct of a member of the R.C.M.P. has been from his own mouth, but he has testified under the protection of section 5 of the Canada Evidence Act, and that testimony could not be used against him in court if he were prosecuted. Yet other evidence may be available to establish what his conduct was. In other situations witnesses before us have had no real memory of events of some years ago and the evidence before us is based on written communications and written records made at the time. In such cases the evidentiary rules relating to hearsay would apply in court although they did not apply to our proceedings. We mention these merely as illustrations of difficulties that may be encountered by a prosecuting authority in deciding whether there is sufficient evidence available to make it reasonably probable that the essential facts could be proved beyond a reasonable doubt.

(b) If the answer to the first question is in the affirmative, i.e. that there is a reasonable prospect of a conviction, the authorities are unanimous in recognizing that the prosecutorial authority must still be satisfied that a prosecution is, in all the circumstances of the case, consistent with the public interest. As the Attorney General of Ontario, the Honourable Roy McMurtry, has stated in the speech to which reference has already been made:

> A prosecution is not automatically launched in every case where there is some evidence to support the laying of criminal charges. Police officers and the Crown law officers who advise them have broad powers to decide whether or not to launch a prosecution, taking into account all the circumstances surrounding the case . . .
>
> This exercise of judgement was best put by two Attorneys General of England, Sir John Simon and Sir Hartley Shawcross, both speaking in the House of Commons. I quote: "There is no greater nonsense talked about

---

[8] J.Ll.J. Edwards, *Criminal Law and Its Enforcement in a Permissive Society* (1969-70) 12 Crim. L.Q. 417, at p. 427.

[9] Keith Turner, *The Role of Crown Counsel in Canadian Prosecutions* (1962), 40 Cdn. Bar Rev., p. 448.

Attorney General's duty than the suggestion that in all cases the Attorney General ought to prosecute merely because he thinks there is what lawyers call 'a case'. It is not true, and no one who has held the office supposes that it is."

Sir Hartley Shawcross supported Sir John Simon's position: "It has never been the rule in this country... that suspected criminal offences must automatically be the subject of prosecution... The public interest... is the dominant consideration."

Sir Hartley outlined how he directed himself in deciding whether or not to prosecute in a particular case. I quote: "The Attorney General may have to have regard to a wide variety of considerations, all of them leading to the final question: Would a prosecution be in the public interest; including in that phrase, of course, in the interests of justice?

In the ordinary case... one... has to review the evidence, to consider whether the evidence goes beyond mere suspicion and is sufficient to justify a man being put on trial for a specific criminal offence.

In other cases, wider considerations than that are involved. It is not always in the public interest to go through the whole process of the criminal law if, at the end of the day, perhaps because of mitigating circumstances, perhaps because of what the defendent has already suffered, only a nominal penalty is likely to be imposed."

Mr. Speaker, I would stress that not merely is this the law of Canada as well as England, but that it also reflects very accurately the responsibilities of the Attorney General of Ontario, certainly as I have experienced them during the last two-and-a-half-years.[10]

(c) Although police officers should be treated the same as other persons in the application of the same law that is applicable to them and to other persons, a factor which may in an appropriate case be taken into account in determining what the public interest is, is illustrated by the sentiments expressed in *Blake* v. *The Queen*,[11] a decision of the Supreme Court of Prince Edward Island. In that case the appellant, a town Chief of Police, had committed perjury during the trial of an accused by giving evidence as if the events he described had been observed by him personally, whereas in fact they were observed by other persons who were available to give the evidence if they had been called. At trial he was sentenced to two years imprisonment. On appeal, the court was unanimous in reducing his sentence to one day of imprisonment and a fine of $1,000. Mr. Justice M.J. McQuaid (with whom Mr. Justice Large concurred) said:

He has no criminal record whatsoever and we are satisfied that the commission of this offence did not stem from any real criminal intent. His counsel seems to express it quite accurately when he states in his factum:

"The offence committed by the appellant was committed more out of a misapprehension of the function of a police officer in the criminal justice system rather than for the reasons normally associated with criminal behaviour."

---

[10] Legislature of Ontario Debates, 2nd session, 31st Parliament, No. 3, pp. 50-2.
[11] [1978] 4 C.R. (3d) 238.

> The considerations which should guide the court in determining the fitness of a sentence to be imposed in a criminal matter are set out by our present Chief Justice in *R.* v. *Muttart* [1971], 1 Nfld. & P.E.I. R. 404 (C.A.), where he states at p. 405:
>
> "... the degree of premeditation involved, the circumstances surrounding the commission of the offence; the gravity of the crime; the attitude of the appellant after the commission of the crime as it served to indicate the degree of criminality involved; the previous record of the appellant; the age, mode of life, character and personality of the offender; and the recommendation of the jury."

The third member of the P.E.I. Court of Appeal, Mr. Justice C.R. McQuaid, reluctantly concurred with the reduction of sentence decided upon by the other two members of the court, but he expressly rejected the contention of counsel for the Police Chief. He said:

> Prior to this occurrence, the appellant had had twenty years of police and police-related work. This, in my opinion, was no mere misapprehension; he knew, or should have known, better.
>
> One can, perhaps, understand though not excuse the perjury of an accused in his attempt to evade conviction and punishment. On the other hand, one can neither understand nor excuse the perjury of a police officer in his attempt to secure the conviction of an accused, regardless of how convinced that police officer may be personally of the guilt of the accused.
>
> The fundamental duty of any police officer is to respect and protect the rights of *all* citizens, and that includes as well the rights of any individual citizen with respect to whose guilt the officer may be morally convinced. When we, as a society, and particularly the courts, condone any deviation from this principle, we are, indeed, in trouble.

Factors such as those discussed in the two judgments just quoted from are relevant not only at the stage after conviction when the court is deciding what sentence is appropriate, but also to the exercise of the discretion to prosecute. On the other hand, some factors, such as motive, are irrelevant to the determination of criminal responsibility or even the launching of a prosecution, whereas after conviction they may be relevant to the nature of the punishment to be imposed, if any.

(d) Another factor which may be taken into account in assessing the public interest is whether the conduct of the police officer was a matter of choice on his part or is more aptly characterized as following an official practice of the police force which had the approval of the senior management of the force.

(e) Similarly, where the conduct of members of the police force is institutionalized in the sense described in (d), a factor which the public interest may require to be taken into account, in assessing whether a prosecution should lie against senior officers who authorized the practice, is whether the practice had either expressly or by implication received the approval of government. This issue arises only where the practice in question has been known to government and the government has taken no steps to put a stop to the practice. Here, reference should be made to a report of the United

States Department of Justice on January 14, 1977, concerning its investigation and prosecutorial decisions with respect to Central Intelligence Agency mail opening activities in the United States:

> The issue involved in these past programs, in the Department's view, relates less to personal guilt than to official governmental practices that extended over two decades . . .
>
> During the period in which the mail openings took place, there was no clear control to ensure that arguably valuable intelligence techniques would be employed only with careful attention to their legality and their effects on individual rights. The absence of defined control was perhaps in part the result of the necessary secrecy, even within the government, that attends intelligence operations. Whatever its cause, the failure of officials at the highest levels who were generally aware of these activities (though they did not participate in them) to clarify the law and establish institutional controls, and their apparent contentment to leave the individuals operating in this field to proceed according to their best estimates of legal constraints in a vague and yet vitally important area — all this would render a prosecution by the government hypocritical. What really stands indicted as a result of the information which the Department's investigation has disclosed is the operation of the government as an institution: specifically, its failure to provide adequate guidance to its subordinate officials, almost consciously leaving them to "take their chances" in what was an extremely uncertain legal environment.
>
> . . . The failure to convict . . . would hinder the development of the standards that we believe the law now establishes. The Department believes that the objective of preventing repetition of such activity can better be achieved by other means.

This passage requires some comment about particular details in it. First, in our system it is quite erroneous to speak of "prosecution by the government"; when an attorney general decides whether or not to prosecute the decision is *his*, not that of the government, even though he is also a minister in that government. Thus, for example, if the person against whom criminal proceedings are contemplated happens to be a Minister of the Crown or a Deputy Minister, or, for that matter, anyone in the executive branch of government, it is the duty of the Attorney General to reach his decision without regard to any embarrassment or prejudice that his decision to institute proceedings may cause either the individual concerned or the government of which he happens to be a member. Consequently, that part of the passage just quoted which speaks of government "hypocrisy" should be regarded as inapplicable to Canada. Our second comment on the passage quoted is as follows. Any failure at the governmental level (and, equally, at the R.C.M.P.'s management level) to clarify the law and establish institutional controls of activities known to them should not logically be regarded as having greater weight in favour of the interests of a member of the R.C.M.P. who might be charged with an offence, than would a defence of superior orders. If, as we suggest in our Second Report, Part IV, Chapter 1, "it is doubtful that a member of the R.C.M.P. would, at least in the absence of sudden violence or some other emergency, be able to raise successfully a defence of

superior orders", then it should follow, in logic, that a "superior's" conduct falling short of an "order" ought to be accorded no greater weight.

(f) The same report of the United States Department of Justice also identifies another factor which may be relevant to the public interest in the exercise of prosecutorial discretion. The report observes that

> The Department has concluded that a prosecution of the potential defendants for these activities would be unlikely to succeed because of the unavailability of important evidence and because of the state of the law that prevailed during the course of the mail openings program...
>
> ...An acquittal would have its own costs — it could create the impression that these activities are legal, or that juries are unwilling to apply legal principles rigorously in cases similar to this.

Much of the thrust of the passages we have quoted tends to emphasize those factors which might militate in favour of non-prosecution or clemency. It should be borne in mind that public statements by prosecuting authorities — such as those we have quoted — as to the manner of exercising prosecutorial discretion are usually made to explain decisions that have been taken not to prosecute. It is less easy to find recent public statements by a prosecuting authority as to his reasons for prosecuting when a prosecution has been commenced. Consequently, we can offer no counterbalancing quotations, but remind the reader that, in addition to the factors that favour non-prosecution, there should be placed in the scales the importance of ensuring that members of a police force obey the law. It should be borne in mind that peace officers are already given substantial protection by the law, provided that they stay within its terms, in the use of such investigative techniques as search, seizure, arrest, detention, interrogation, physical surveillance and electronic surveillance. If there is evidence that any persons outside the police force, be they members of the public service or Ministers of the Crown, participated in offences, the decision whether to prosecute such persons is governed by the same principles.

B. OBSERVATIONS CONCERNING DISCIPLINARY PROCEEDINGS

8. It is not our intention to set out exhaustively the considerations which the Commissioner of the R.C.M.P. might properly take into account in deciding whether to discipline a member for conduct which we have criticized in this Report. However, it is appropriate that we draw attention to the observations of the Director of the F.B.I., Judge W.H. Webster, in a Report made to the United States Attorney General, Judge Griffin Bell, on December 5, 1978. This Report was concerned with the question of whether or not administrative discipline should be instituted against members of the F.B.I. engaging in illegal activities during the investigation of the Weather Underground organization. The Department of Justice had already decided not to prosecute the members of the F.B.I. arising out of this matter. He said:

> Administrative discipline rests upon an independent base from prosecutive action. Its purpose is to assure honest and efficient performance of duty and to maintain the high standards of the agency. It should have a therapeutic effect upon the individual disciplined and upon other employees. To be effective, it should be promptly and impartially administered. It is not a substitute for prosecutive action and in fact may be applied whether or not preceded by prosecution. For that reason, I have consistently requested the Department of Justice to exercise its prosecutive discretion in matters involving F.B.I. employees without regard to what administrative action, if any, I might conclude to be appropriate.

He set forth the general factors which led to his decision, as follows:

> In assessing the disciplinary action proposed to be taken in specific cases, I have considered a number of factors, including the gravity of the conduct, whether it was isolated or repeated, whether it contributed to involvement of others, and whether it was in the nature of negligence or insubordination. I have considered mitigating circumstances such as the general climate of the times and whether the agent was performing reasonably in accordance with superior orders. I have also considered the agent's previous record, his subsequent record, the level of his responsibility at the time the conduct occurred, and the extent and quality of his cooperation during the inquiry.

9. Judge Webster noted that street agents engaged in wiretapping without a judicial warrant, and in mail openings, along with other activities, under the supervision of, or specific authority from, supervisors. This led him to decide that no disciplinary action was appropriate for 58 street agents. However, he censured two of the street agents. In one of the cases, the agent, without previous authorization, searched an apartment through the co-operation of the building's rental agent. Judge Webster observed:

> While his supervisor orally approved his subsequent report of the entry, it is clear that the agent's intrusive actions were on his own. In order to make certain that this activity is not repeated, I have censured the agent.

10. In the other case, the agent, posing as a plumber, was admitted to an apartment by the building superintendent. Judge Webster recited conflicting evidence as to whether the agent obtained advance approval from his supervisor to enter, and concluded as follows:

> I have determined that appropriate advance approval was not obtained and the results of this entry were incorrectly reported. In order to make certain that this activity is not repeated, I have censured this Special Agent.

With regard to the street agents who were not disciplined, Judge Webster observed that

> I think it is significant that since 1976, when the Attorney General guidelines for domestic security investigations went into effect, there has not been a single incident resulting in a successful claim of constitutional tort against an F.B.I. agent. Thus, it seems clear to me that to discipline the street agents at this late date for acts performed under supervision and without needed legal guidance from F.B.I. Headquarters and the Department of Justice would wholly lack any therapeutic value either as a personal

deterrent or as an example to others. It would be counter-productive and unfair.

Most of the supervisors whose actions he reviewed also escaped his disciplinary action. He observed that he had

> . . . generally followed the same policy of not assigning discipline when the supervisor merely was in the line executing surreptitious investigation techniques with the knowledge and approval of superior authority.

However, he instituted disciplinary proceedings proposing administrative action ranging from 30 days suspension without pay, to dismissal, in four cases. They may be summarized as follows:

(a) a headquarters supervisor who, while serving as a field supervisor, ignored specific instructions and manual regulations, and authorized and approved electronic surveillances and mail openings "thereby failing to discharge his duty to give needed guidance to his subordinates and subverting the existing procedures which, if followed, should have restrained such conduct". He also violated existing procedures by approving four surreptitious entries without obtaining prior authorization from his superiors. Judge Webster proposed to dismiss this employee.

(b) A headquarters supervisor who "failed to take action on field reports of unauthorized activities that should readily have been recognizable to him in cases for which he had responsibility as desk supervisor". Judge Webster proposed to dismiss this employee.

(c) A field official who, in an interview with representatives of the F.B.I.'s planning and inspection division, furnished evasive and inconsistent answers to questions put to him and thus "failed to co-operate fully in this inquiry". Judge Webster proposed to demote this employee.

(d) A field supervisor who "installed and monitored an electronic surveillance device without specific authority from Headquarters and, upon being informed that Headquarters would not approve the installation, erased the tapes without authorization". Judge Webster describes this as "a serious but isolated infraction which reflects negligence and confusion rather than willfulness and concealment". Judge Webster censured and suspended this employee for 30 days.

11. In his Report of December 5, 1978, Judge Webster also said:

> Administrative discipline is not a criminal process. The Attorney General has passed upon the criminal aspects of the activities under consideration and has concluded that they did not warrant prosecution.
>
> I in turn viewed the conduct more in reference to standards of discipline and conduct imposed upon employees of the Bureau, breaches of which are subject to administrative discipline. It is vitally important that Special Agents comply strictly with these standards and regulations. Procedures are intended to protect the public, the Bureau, and the employee. This is especially true of activities for which prior higher approval is required. An agent who ignores the requirement of prior authorization must be subject to discipline if such rules and regulations are to be effective.

12. We do not think that the tradition in Canadian police forces has been that administrative discipline has been regarded as wholly distinct from offences under the criminal law or other statutes. In other words, there is ample precedent both within the R.C.M.P. and other Canadian police forces, for disciplinary proceedings to be taken against a member who has escaped prosecution by the civil authorities or whose trial has resulted in an acquittal. With respect to the R.C.M.P. it is not unusual that the member will nevertheless be disciplined, for he may be regarded as having committed either a "major service offence" under section 25 or a "minor service offence" under section 26 of the R.C.M.P. Act. Section 25 provides that:

> Every member who
>
> . . .
>
> (o) conducts himself in a scandalous, infamous, disgraceful, profane or immoral manner. . . is guilty of an offence, to be known as a major service offence and is liable to trial and punishment as prescribed in this Part.

Section 26 provides as follows:

> Every member who violates or fails to comply with any standing order of the Commissioner or any regulation made under the authority of Part I is guilty of an offence, to be known as a minor service offence, and is liable to trial and punishment as prescribed in this Part.

C. THE AVAILABILITY OF EXECUTIVE RELIEF FROM PUNISHMENT OTHERWISE THAN BY DECIDING NOT TO PROSECUTE

13. Can a pardon be granted before conviction and even before prosecution? This question received public attention in the United States when President Gerald Ford pardoned former President Richard Nixon in 1974. That pardon was conferred by virtue of Article II, Section 2 of the United States Constitution, which gives the President "power to grant reprieves and pardons for offences against the United States except in cases of impeachment". Mr. Nixon was accorded "a full, free and absolute pardon — for all offences against the United States which he. . . has committed or may have committed" during his years as President. President Ford declared: "The Constitution does not limit the pardon power to cases of convicted offenders or even indicted offenders".[12]

14. In Canada, the Criminal Code provision for pardon is limited to pardons after conviction. Section 683(2) states:

> The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

However, section 686 of the Criminal Code provides that nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy. Two

---

[12] See J.Ll.J. Edwards, *Ministerial Responsibility for National Security*, 1979, p. 50.

positions may be argued for: one, that section 683(2) was intended to be an exhaustive legislative formulation of the circumstances in which a pardon may be granted; the second, that the subsection is "declaratory of one situation but does not purport to cover all situations in which a free or conditional pardon may be granted".[13] Whatever the meaning of the subsection, the power of the Governor General of Canada to grant a pardon appears to be limited by his Letters Patent, in the case of a principal offender, to situations where there has been a conviction. According to the Letters Patent:

> We do further authorize and empower our Governor General... to grant to any offender convicted of any such crime or offence in any Court, or before any Judge, Justice or Magistrate administering the laws of Canada, a pardon either free or subject to lawful conditions ...[14]

The Letters Patent, significantly, empower the Governor General to pardon an accomplice "when any crime has been committed for which the (principal) offender may be tried".

15. The federal Cabinet, in the name of the Governor in Council, has the power of clemency,

> ... that is, the issuing of a reprieve or pardon to offenders against the laws of the Dominion, notably, of course, for criminal offences. This may be applied to individuals or, a more unusual example, to a group, such as the general amnesty given to offenders under the Military Service Act after the First World War.[15]

16. Proclamations of amnesty for past offences against the Crown have been issued by Governor Generals of Canada in 1838 and 1875 as exercises of the Royal Prerogative.[16]

17. Whether there is a subsisting power to pardon before conviction in England is the subject of disagreement among English writers. S.A. de Smith wrote in 1971:

> It would seem that a pardon may be granted *before* conviction; but this power is never exercised. The line between pardon before conviction and the unlawful exercise of dispensing power is thin.[17]

On the other hand, R.F.V. Heuston states without qualification that "... the monarch may pardon any offence against the criminal law whether before or after conviction".[18] The conclusion of Professor Edwards is that

> ... the general understanding among British constitutional law authorities is that the practice has fallen into disuse.

---

[13] *Ibid.*, p. 50.

[14] *Ibid.*, p. 51.

[15] R. MacGregor Dawson, *The Government of Canada*, Toronto, The University of Toronto Press, 1952, p. 243.

[16] Edwards, *Ministerial Responsibility For National Security*, fn. 179A, citing Todd, *Parliamentary Government in the British Colonies*, 1st ed., 1880.

[17] *Constitutional and Administrative Law*, p. 128. See also Wade and Phillips, *Constitutional and Administrative Law*, 9th ed. (A.W. Bradley, ed.) p. 338.

[18] *Essays in Constitutional Law*, 2nd ed., p. 69.

He expresses the opinion that

> ... the most important objection to any such practice is that it is out of harmony with modern views as to the propriety of granting dispensation before the normal process of the criminal law has run its course.[19]

His view, like that of Professor de Smith, is that the exercise of the prerogative power of pardon before conviction "evokes echoes of the Stuarts' dispensing power which was roundly condemned in the Bill of Rights in 1688".[20]

[19] Edwards, *Ministerial Responsibility For National Security*, p. 52.
[20] Edwards, *ibid.*, p. 53.

PART VIII

RECOMMENDATIONS CONCERNING PUBLICATION OF THIS REPORT

1. Our conclusion concerning some of the situations that we report on here is that, on the basis of the evidence before us, there were, or may have been, violations of the Criminal Code or of other federal or provincial statutes that provide a penalty upon conviction. These are situations as to which, while in most cases the evidence is public, counsel made their written and oral representations to the Commission *in camera*, in response to notices given to their clients under section 13 of the Inquiries Act. This was done in accordance with our reasons for decision of May 22, 1980, (reproduced as Appendix H to our Second Report). In those reasons we observed that

> . . . it is possible that we may recommend to the Governor in Council that our analysis of the legal position in the particular case and our recommendations as to what should be done should not be published until the matter is finally disposed of by a decision either not to prosecute or launch disciplinary proceedings, or, if there is a decision to prosecute or launch disciplinary proceedings, the final disposition of such criminal or disciplinary proceedings.

We invited submissions from counsel with regard to this matter of publication but received representations from only one counsel, Mr. Yarosky, who acts for several members of the R.C.M.P.

2. Having reflected a good deal about this matter, we are of the opinion that it would be unfair to those concerned to publish our Report at this time, in so far as it concerns situations which may possibly lead to criminal proceedings. Commissions of Inquiry are extraordinary inquisitorial procedures that may, and do, require people to testify, even though, if they were accused in court, they could not be compelled to do so in the court. That an accused is not compelled to testify in court is regarded as a fundamental principle of our legal system. The publication of our Report, and the attendant publicity, might make it difficult for those against whom we make a report or charge of misconduct to obtain a fair trial: the trier of fact may read our Report or — more likely — press summaries of our Report, or be told (perhaps erroneously) about what we had said. In the latter two cases the trier of fact is likely to be unaware of our warning that, as we said in our reasons for decision of May 22, 1980,

> Counsel for the Commission have done their utmost to elicit all relevant evidence, whether favourable or unfavourable to an individual, but there may be evidence that has not been made known to our counsel and that

would be placed before a court of law, either favourable or unfavourable to the accused, that would result in the facts having a different complexion. Moreover, some evidence which has been before the Commission might not be before a court, such as the evidence of an accused person whose evidence before this Commission, given under the protection of sec. 5 of the *Canada Evidence Act*, would not be admissible for the prosecution.

In regard to the latter — the evidence given by a member of the R.C.M.P. under compulsion by us — we add that the result of the immediate publication of our Report could be not only that the trier of fact might be aware of the evidence from press reports of our hearings since December 1977, but his memory of that evidence might be refreshed by press reports based on this Report's summary of the accused's testimony, and coloured yet further by our expressions of opinion as to the credibility or otherwise of the accused.

3. In our reasons for decision of May 22, 1980, we drew attention to a fundamental issue — "whether public commissions of inquiry, which have become so common in Canada, should be used as an instrument of the investigation of facts where the government reserves the right to proceed in the courts against the individuals whose conduct is investigated by the commission". We pointed out that in England, the Royal Commission on Tribunals of Inquiry (chaired by Lord Salmon), reporting in 1966, said:

> The publicity... which such hearings usually attract is so wide and so overwhelming that it would be virtually impossible for any person against whom an adverse finding was made to obtain a fair trial afterwards. So far no such person has even been prosecuted. This again may be justified in the public interest because Parliament having decided to set up an inquiry under the Act has already considered whether or not civil or criminal proceedings would resolve the matter and has decided that they would not.

We commented:

> Such consideration does not appear so clearly to be given by the Governments of Canada or of the provinces when they appoint commissions of inquiry. In England a commission of inquiry, at least if it is to sit in public, is a mechanism of investigation that should be used only if the decision has been made not to prosecute the individuals whose conduct the Commission is bound to investigate if it is to carry out its mandate.

We might have added that the problem is complicated in Canada, for the federal government, when it appoints a commission of inquiry, has no means of undertaking that a provincial attorney general will not prosecute.

4. The risk of prejudicing the right to a fair trial was recognized by one observer of the Report of an earlier Royal Commission — the Taschereau-Kellock Commission on Espionage. In a dispatch to the Dominions Secretary dated August 22, 1946, the British High Commissioner to Canada, Sir Alexander Clutterbuck, said:

> It must be recognized, too, that the Commissioners were placed in a dilemma by having a dual task thrust upon them. According to their terms of appointment, their primary duty was to report on who, in the public service, was involved: but they also had the wider function of investigating

the whole espionage system. But this inevitably means that their Report takes on two self-contradictory qualities — it is not only a commission appointed to report to Parliament on a general question, but also it inevitably constituted itself a judicial tribunal, in effect, to try certain persons of suspected illegal activities, without any actual charge being laid against them. It is fair to the Commissioners to say that this difficulty was inherent in the problem and was an insuperable one. But it has led them to make comments in a public document which cannot fail to be prejudicial to the individual if and when proper judicial proceedings are taken. In certain cases, for example, the Commissioners frankly state that the person questioned was furtive and evasive and that they did not accept his answers.[1]

5. The English attitude is illustrated by a statement made by the Attorney General of England, Mr. Samuel Silkin, explaining why it was undesirable to appoint a tribunal of inquiry:

> It is absolutely essential, in the interests of justice, that the trial of a person charged with a criminal offence should proceed without any taint being cast on the defendant before the proceedings commence. Indeed, the task of the police in carrying out their investigation would be made impossible by a concurrent inquiry into the very same matters.[2]

6. It is outside our terms of reference to make recommendations as to the use of commissions of inquiry in cases where the right to prosecute after the commission has published its Report is reserved, unfettered, although we think that governments at various levels should give careful consideration to this problem. However, we do feel it to be "necessary and desirable in the public interest" to comment on, and make recommendations concerning, the consequences of this problem in the situations that are before us.

7. Our recommendation is that, out of regard for the public interest in doing everything that is possible to ensure that members of the R.C.M.P. and others receive fair trials, our report as to these situations ought not to be made public either until the appropriate prosecutorial authority has decided not to prosecute, or has decided to prosecute and the judicial proceedings have been finally concluded.

8. The same concern moved His Honour Judge R.P. Kerans, of the District Court of Alberta (now a member of the Court of Appeal of Alberta), to take a similar approach in his Report under the Public Inquiries Act of Alberta into the affairs of the Cosmopolitan Life Assurance Company. In his Report, Judge Kerans said:

> ... my comments with respect to possible criminal violations have been isolated and placed in Appendix E, so that the Government may, if it decides to make the balance of the report public, readily segregate this portion of the report and not make it public, at least until after any prosecutions which may be brought are disposed of.

---

[1] Quoted in H. Montgomery Hyde, *The Atom Bomb Spies*, 1980, London, Hamish Hamilton, and Don Mills, Nelson Canada, p. 78.

[2] United Kingdom, Parliamentary Debates, November 8, 1978, ed. 975.

It is our understanding that the comments made by Judge Kerans, which were isolated and placed in Appendix E, entitled "A Memorandum Respecting Possible Criminal Violations", were not made public, but that criminal prosecutions did ensue and were carried to their conclusion. At some time the memorandum was made available for inspection by the Legislative Assembly of Alberta, but it was never made public.

9. When we delivered our reasons on May 22, 1980, we referred also to the possibility of disciplinary proceedings. On reflection, we now think that if there is no real possibility of criminal charges but only a possibility of disciplinary proceedings, the same reasoning does not apply. In disciplinary matters the ultimate authority is the Commissioner of the R.C.M.P., and we think that it would be unrealistic and unwise to suggest that he not be aware of any part of our Report; therefore no rationale justifies postponing publication.

10. It goes without saying that we think that sections of our Report should be published if our conclusion as to a particular situation is that no one committed a crime or offence of any kind. In some situations, no doubt, we may come to that conclusion with regard to certain members of the R.C.M.P. but not to others. In that case we think that our Report should not be published until there is either a decision not to prosecute those whose conduct is questioned or until any proceedings against them are completed, but of course the members who are exonerated by us should be so informed. We suggest that they might be wise to refrain from publicizing that fact in case the press should infer that their colleagues have been the subject of an adverse report by us.

11. We remind the reader that in the situations we are speaking of, the *evidence* is already in the public domain, except certain evidence not made public because of considerations of national security or the privacy of individuals or other grounds of public interest. We think that those situations in which we recommend, for the reasons set out above, that publication of this Report be postponed should nevertheless be listed in our published Report so that everyone will know that we have reported on them.

12. We have so far been referring to the publication of this Report as it pertains to the conduct of members of the R.C.M.P., and in particular as it tends to implicate them. Inevitably, postponement of publication may mean that our opinions that exonerate some members, wholly or in regard to certain aspects of their conduct of some members, will not be published at this time. However, the members concerned should have a copy of this Report so that our reasoning may be available to them.

13. However, there is one area explored in this Report that may be of assistance to them and that we consider should be published now without limitation. That is Parts II and III, in which we report on the extent to which Ministers and public servants participated in, or knew of and tolerated acts or practices that were not authorized or provided for by law. In none of these situations do we identify any criminal conduct. Therefore the considerations that motivate us to recommend postponement of publication of sections of our Report concerning acts of members of the R.C.M.P. are inapplicable. There is an additional important consideration. We think that information as to the

extent to which there was such participation or knowledge should be available to counsel who act for any members of the R.C.M.P. charged with offences arising out of the matters upon which we report. For reasons given in detail in Part IV of our Second Report we do not think that this has any bearing on the issue of guilt. However, a court, furnished with the information contained in Parts II and III of this Report, might, on the facts of the case, reach a conclusion in law different from that which we expressed in Part IV of our Second Report. Yet, defence counsel will not have the opportunity of laying before the court the facts found in Parts II and III unless they are published. In any event we recognize that it may have a bearing on the kind of sentence that would follow any finding of guilt.

14. Moreover, the matters reported on in Parts II and III may have a bearing on the exercise of prosecutorial discretion. Therefore those Parts of our Report should, through publication, be available to counsel exercising the discretion, and to defence counsel who may wish to attempt to persuade a Crown Attorney not to prosecute.

15. It is not realistic to assume that our Report can be made available to counsel without the contents becoming public. The contents might be referred to in public by counsel either for the Crown (as, for example, in explaining in court an application for a stay of proceedings where a private prosecution has been launched), or by an Attorney General (as, for example, in making a statement in a legislative body as to why a prosecution has been launched or has been decided against), or by defence counsel (as, for example, when he makes representations as to sentence). If sections of Part II and III are likely to be referred to in this way, it is preferable that the whole be made public at the same time.

16. In addition, there is a public interest at stake that extends beyond the consideration of prosecutions. It would be unfair to the R.C.M.P. as an institution, and to certain past senior members of the R.C.M.P. if our Second and Third Reports were published without Parts II and III. The conduct of these senior members has been the subject of considerable publicity arising from our hearings. Some of them have testified publicly that the government — Ministers — knew that the R.C.M.P. were engaged in illegal activity, and that "the record", if it could be located, would bear out their testimony. In Part II we make findings that do support their testimony to some degree. Non-publication of Parts II and III would be unfair to those witnesses. Moreover, non-publication of Part II would make it impossible for us to report in a public form as to whether the government had knowledge of illegal activity, in a manner that would be balanced and fair to *all* concerned.

17. There are, of course, sections of Part III of this Report that deal with evidence that is already in the public domain. The facts disclosed in most of Part II of this Report have, until now, not been in the public domain. We refer to those sections of Part II that deal with the meetings of the Special Committee of the Security Panel held on November 27, 1970, and of the Cabinet Committee on Priorities and Planning held on December 1, 1970. We recognize that important policy considerations weigh in favour of guarding the

confidentiality of the proceedings of Cabinet and of Cabinet committees. In our reasons for decision dated October 13, 1978, and February 23, 1979, (reproduced in Appendices F and Z to our Second Report) we discussed the governing principle of confidentiality concerning these proceedings. In those reasons we expressed the view that there would be limits to such confidentiality: that if those present became parties to an offence, the protection of confidentiality ought not to apply. That situation does not apply here.

18. Nevertheless, we think it would be unfair to those whose reputations have been put in issue, and who may be faced with criminal charges, if our report in regard to those meetings were withheld from publication.

APPENDIX A

29 June 1978

STATEMENT BY THE COMMISSION'S CHIEF COUNSEL REGARDING THE COMMISSION AND ITS RELATIONSHIPS WITH THE PROVINCIAL ATTORNEYS GENERAL

1. I hope that I may be forgiven if I adopt the, for me, unusual and uncomfortable procedure of reading from a prepared text. The subject of the Commission's relationship with the Provincial Attorneys General is so important that I want to be especially precise in my statements, in particular when I am expressing the views and policies of the Commission. I will, of course, be pleased to answer any questions and enter upon a discussion of any concerns of yours when I have done my reading.

2. I begin by stating that I am authorized to assure you on behalf of the Commissioners that from the outset it has been, and is still, their intention to recognize fully and respect the constitutional responsibilities of the Provincial Attorneys General.

3. Some of your officers, with whom I have spoken or had correspondence, have expressed the view to me that all law enforcement activities within a province are within the exclusive jurisdiction of the Attorney General of the province. The Commissioners neither agree nor disagree that this position represents the current state of the law. They recognize that there are unresolved issues involved and, like you, await resolution of the cases currently before the Supreme Court of Canada.

4. We have studied with some care the contracts between the Government of Canada and the eight "contract provinces" out of a concern to understand the practical problems, as well as the legal situation, with respect to law enforcement. Subject to your views as they may be expressed to me, at least as a practical matter, it appears to me in reading the contracts that the Government of Canada has retained under its control the internal management and the administration of the Force, and therefore can appropriately authorize the kind of inquiry set out in the Order-in-Council under which our Commission is operating.

5. Having said that, however, I want to emphasize that the Commission has recognized from the beginning that very serious problems could arise in determining the correct method of handling information received by it which could indicate the possibility of criminal or other offences — whether on the part of members or former members of the R.C.M.P., or on the part of others.

6. It is common knowledge that certain specific incidents were referred directly to the Commission upon its appointment. Others have been added since by referral and by decision of the Commission, by complaints and by its own research, as well as by matters brought to its attention through the media.

7. Basically, the Commission is established to do two things as defined in its terms of reference. I paraphrase:

1. To investigate and report on the extent and prevalence of any investigative action or other activity of members or former members of the R.C.M.P. which are not authorized or provided for by law.
2. Perhaps more important, it is required to make recommendations about the policies and procedures adopted by the R.C.M.P. in discharging its responsibility for the security of Canada and upon the adequacy of the laws of Canada as they apply to this responsibility.

8. At the time the Commission was appointed, there were already provincial inquiries involving members of the R.C.M.P. being conducted in Nova Scotia, New Brunswick, Quebec and Alberta. Since the appointment of the Commission, we have tried to avoid duplication and overlapping.

9. Perhaps it would be useful if I summarize very briefly the procedures which have been adopted by the Commission. I shall speak, not of the allegations of a national concern which have been referred to the Commission by the federal government, but of those received which are in the nature of complaints by citizens and others across the country.

10. When allegations are received, the first consideration is to ascertain the facts with enough certainty to determine whether the matter comes within the terms of reference of the Commission. Assuming that the investigation by our staff establishes that to be the case, the Commission then decides whether the matter is to be dealt with in some detail and ultimately form the basis of a full report, including recommendations as to whatever further law enforcement actions may be considered appropriate; or, on the other hand, whether in the circumstances it would be in the best interests of the administration of justice to recommend at once that the matter should be referred to the appropriate law enforcement authority. There are obviously going to be cases which fall between these extremes.

11. Perhaps some examples would be useful.

12. The Commission has not begun and, I believe, would not ever begin to investigate an allegation of what I might call a "fresh" murder. Obviously we do not have any such allegation but, if we did, it is my understanding that the Commission would refer it at once to the appropriate Provincial Attorney General.

13. At the other end of the scale, one may infer from the record of the Commission that it intends to deal rather completely with problems arising from mail check operations and the problems posed by electronic and other surveillance. These topics have been the subject of much public controversy here in Canada and elsewhere, which has been going on over an extended period of time.

14. In the case of electronic and other surveillance, which we have been considering under the short description "Surreptitious Entries", clearly we are looking at a course of conduct which has gone on for a long period prior to July 1, 1974 and subsequently. Some of these activities may have involved surreptitious entry which in turn may have constituted civil trespass, offences under provincial law, or even some criminal offence (at least on the part of senior authorizing officers). However, this procedure has been a matter of public concern and knowledge for some time — certainly since the mid-60s — and a matter of public record since 1973.

15. Under this general topic, obviously there are numerous specific instances, yet the principal concern of the Commission so far has been that the events also clearly raise concerns as to what the law is, or should be. It is for this reason that at the conclusion of the first four days of public hearings into this topic, so far as it relates to the Criminal Investigation Branch, copies of the transcripts and the exhibits were sent to each provincial Attorney General in the hope that the views of the Attorneys General might be secured as to the issues raised in the evidence.

16. Having dealt with the foregoing general matters, I should recognize that certain specific concerns have been communicated to us by some Attorneys General or their Deputies. These may be summarized, I believe, as follows:

(a) The work of the Commission may amount to an interference with the function of the Attorney General of a province as the official bearing the ultimate responsibility for law enforcement in a province. (As indicated, some Attorneys General have taken the position that this is their function exclusively.)

(b) The work of the Commission could amount to an interference with the due administration of the provincial police force acting (in eight of the provinces) under contract. There has been some concern expressed in this area as to criminal investigation and even as to the activities of the Security Service of the R.C.M.P.

(c) The work of the Commission could amount to meddling in procedures already established by a province for dealing with complaints regarding the police in performing their provincial policing services; and finally,

(d) The work of the Commission's staff, in carrying out any investigation in the province, might be regarded as improper in that such investigations are properly the function of the Attorney General and his staff.

17. I believe it is clear that the matters now being inquired into through the *formal hearings* of the Commission do not fall within any of these areas of complaint. However, among some provincial Attorneys General, some concern has arisen as to the activities of our investigators in following up upon complaints received by the Commission from the public. It may be well, therefore, for me to deal even more precisely with the procedures which have been adopted by the Commission in this connection.

18. We have approximately 200 complaint files which have been received from residents of every province with the exception of Newfoundland. I have a staff of seven investigators who have been engaged since November in contact-

ing each one of these persons to ascertain the details of the complaint. When these details have been secured, my instructions to the investigators are that the reports are to be forwarded to me. I then prepare summaries and forward them to the Commissioners who decide what action, if any, is to be taken by the Commission.

19. I am sure that many of the names of these complainants are well known to officers in your departments because a great number of them have been chronic complainers to those bodies which have been established to listen to complaints.

20. We have not yet completed this review. In some cases, in addition to our investigators discussing the matter with the complainants themselves, we have checked at R.C.M.P. headquarters to see whether or not there are any files relating to the complainants. In a *very few* cases, we have authorized our investigators to interview the R.C.M.P. officers involved. I must confess that in one or two cases, particularly at an early stage in the work of the Commission (and latterly in what might best be described as an excess of zeal or an attempt to save travelling expenses), my instructions that no R.C.M.P. officers are to be interviewed until the Commission has reviewed the file have been breached. This has resulted in my speaking to some of you on the telephone before today, but I am sure that, in general, the instructions are being carefully observed.

21. I am sure it will not come as any surprise to you that the Commission has already closed a number of these files. Some have been closed because the complainants are obviously mentally disturbed, and some because the complaints have already been fully dealt with, either by provincial courts or by provincial administrative tribunals set up to deal with such complaints.

22. There may indeed in the end be some of these public complaint files which the Commission will decide should be the subject of a hearing, but these have not as yet been identified.

23. It is not the intention of the Commission to substitute itself for provincial tribunals established to consider and deal with complaints against the police arising out of their law enforcement activities. However, the Commission is charged with reporting upon the extent and prevalance of investigative actions and other activities that are not authorized or provided for by law, and this gives rise to practical problems.

24. I would welcome suggestions from the provincial Attorneys General as to how this responsibility can be discharged by the Commission without in any way interfering with the constitutional or legislative jurisdiction of the provincial authorities.

25. In this regard, may I suggest that it would be of great assistance to the Commission, to me, and to my staff, if each of the provinces could direct an officer of the Attorney General's staff to send to me an outline, together with the appropriate statutory references, of the procedures which do exist within the province to deal with complaints concerning the police arising from their law enforcement activities.

26. I would appreciate your views as to the most practical way to deal with those few cases in which we may wish to interview officers or examine files which may relate to police procedures in performing provincial police services as defined in the policing contracts.

27. It has also occurred to me that, when our review of the complaints has been completed, we might be able to furnish the appropriate officer in each of the offices of the Attorneys General with a statistical summary, indicating the nature and frequence of the complaints which we have received and the period of time covered, in order to invite the provincial Attorneys General to provide the Commission with a comparison between the number of complaints the Commission has received and the number of complaints dealt with by provincial authorities. I would welcome a reaction to this suggestion.