

Mail Opening

The use of mails is almost as much a part of free speech as the right to use our tongues.

Justice Oliver Wendell Holmes (1921)

Protection of the mail is a duty of postal inspectors and the Commission treated it as an aspect of postal security. It soon emerged during the hearings that mail opening by law enforcement agencies and Customs officers was a topic of some importance. It should be noted here that while there is no reference to the Royal Canadian Mounted Police in the Post Office Act, all members of the R.C.M.P. are also appointed as Customs officers. As such, there are specific provisions in the Post Office Act that relate to them.

Counsel were permitted to explore the issue of mail opening with witnesses and the Commission directed its researchers to examine the subject. In addition the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police made available transcripts of the testimony it had heard. It was evident, from the testimony before that Commission and before this one, that there had been requests for cooperation in the opening of mail in the past, some of which were favourably met by Post Office employees. Despite recent publicity and criticism, requests have continued at least until the date of our hearings.¹ While this Commission heard no evidence that recent requests have been granted, the fact that they were made suggests a lack of awareness of the provisions of the Post Office Act (if not a profound misunderstanding of the concept of the sanctity of the mail) by members of various law enforcement agencies — federal, provincial and municipal.

Reading mail covers and conducting controlled deliveries seem to have become routine in certain types of investigations. It has been suggested that there is no prohibition against these activities and that they are not illegal. The term 'mail cover' has been defined, for the purposes of this analysis as

1. Transcript of evidence, pp. 1100-1101.

the process by which a record is made of data appearing on the outside cover of mail in order to obtain information for any purpose whatsoever. The requests for mail covers have been frequent although, again, there is no evidence that they have been granted in recent months.

Allegations were made to the Commission that Customs officers abuse their power to inspect mail. It was brought to the attention of the Commission that they have, on occasion, opened letters without the permission of the addressee. The power of Customs officers to open mail is not without limitation.

The protection of the mail entails not only safeguarding it from theft and other criminal attack, but also from interference. Such interference can be in the form of opening mail, reading or inspecting its contents, reading the outside covers to derive information not meant for public dissemination or delaying it in order to control its delivery.

The opening of mail is not always illegal. It can be done by Post Office employees and others within the confines of the law. On the other hand, under many circumstances the opening of mail is not only illegal, it carries with it a penalty under the law. To understand the nature of the problem, to make provision for the legitimate need to open mail and to safeguard against unwarranted interference it is, therefore, necessary to examine all aspects of mail opening, both legal and illegal. To that end, the following discussion has been organized under three headings:

- Mail opening;
- Mail opening by Customs officers;
- Mail covers and controlled deliveries.

At the time of writing, Parliament is considering Bill C-42, An Act to Establish the Canada Post Corporation. Throughout this report the Commission has sought to make its comments equally applicable to both the Post Office Act and Bill C-42. To do so in its analysis of mail opening, however, requires examination of the texts of both the Act and the Bill. To that end extracts from the two texts are presented side by side when required, especially when there is a substantial variation or when the provisions of the Bill are seen to be inadequate.

The Commission took as its starting point the proposition that mail is the subject of legally protected property rights and, therefore, if it is opened by anyone other than the person in whom those property rights are vested, or without that person's consent, such opening must find legal justification in

specific statutory provisions or in the common law. There are a variety of reasons why persons other than those in whom are vested the principal property rights may wish to open mail. These reasons include: to ascertain the address of the sender or of the addressee, if this is not clearly indicated on the cover, so that it can be properly delivered; to ascertain whether it contains dangerous (e.g., chemicals), life-threatening (e.g., letter bombs) or illegal (e.g., firearms, drugs, etc.) substances; to ascertain whether it contains written material which may be illegal (e.g. pornography) or which may be of interest in protecting national security (e.g., treasonous, seditious or terrorist material); to ascertain whether it complies with Post Office rules and regulations governing the manner in which items may be sent through the mail at particular rates of postage. These reasons may be put forward either by postal authorities or by other persons such as Customs officers or law enforcement authorities.

For the sake of simplicity, these various purposes for opening mail may usefully be summarized as follows:

- (1) the routine fulfilment of the recognized objectives of the Post Office in the efficient and effective collection, conveyance and delivery of mail;
- (2) the detection of criminal and other offences, and the identification and apprehension of offenders;
- (3) the detection of dangerous items in the mail and the prevention of injury or damage which may be caused by such items;
- (4) the detection and prevention of threats to national security, and the identification of persons who may represent such threats.

To analyze the questions surrounding mail opening, it is first necessary to define what is meant by 'mail'. The legal definition is different from common usage. Legally, "mail" changes its status at the moment it leaves the possession of the sender and at the moment it is delivered to the addressee. These changes in status affect the legality of interference with it. Some interference is expressly authorized by law in the Post Office Act, but only within certain defined categories of items. Thus, an appreciation of the definition of 'mail' is essential to understanding the law governing interference with mail.

Subsection 2(1) of the Post Office Act states:

'mail' means mailable matter from the time of its deposit at a post office to the time of its delivery.

For the purpose of the Post Office Act and postal regulations, therefore, an item is only mail from the time it is deposited at a post office until it is delivered. During that period it is "in the course of post".² These two points in time are defined as follows:

Post Office Act

2(1) 'deposit at a post office' means to leave in a post office or with a person authorized by the Postmaster General to receive mailable matter.

'post office' includes any building, room, vehicle, letter box or other receptacle or place authorized by the Postmaster General for the deposit, receipt, sortation, handling or dispatch of mail.

'delivery', as applied to mail, means delivery to the addressee thereof, and for the purposes of this Act

- (a) leaving mail at the residence or place of business of the addressee,
- (b) depositing mail in a post office lock box or rural mail box or any other receptacle provided for the receipt of mail, or
- (c) leaving mail with the addressee or his servant or agent or with any other person considered to be authorized to receive mail,

Bill C-42

2(1) 'deposit at a post office' means to leave in a post office or with a person authorized by the Corporation to receive mailable matter.

'post office' includes any place, receptacle, device or mail conveyance authorized by the Corporation for the deposit, receipt, sortation, handling, transmission or delivery of mail.

'delivery', in respect of mail, means delivery to the addressee thereof.

(2) For the purposes of this Act,

- (a) leaving mail at the place of residence or business of the addressee thereof,
- (b) depositing mail in a post office lock box or rural mail box or any other receptacle or device provided for the receipt of mail of the addressee, or
- (c) leaving mail with the addressee or his servant or agent or with any other person who may reasonably be considered to be authorized to receive mail by the addressee thereof,

2. Section 2(2) of the Act provides, "An article shall be deemed to be in the course of post from the time it is deposited at a post office until it is delivered". Section 2(3) of Bill C-42 is similarly worded.

according to the usual manner of delivering that addressee's mail, is deemed to be delivery to the addressee.

according to the usual manner of delivering mail to that addressee, is deemed to be delivery to the addressee.

These provisions indicate more or less precisely *when* items are mail for the purpose of the Act. They do not, however, indicate *what* is mail for the purposes of the Act. The definition of 'mail' in subsection 2(1) provides that 'mail' means "mailable matter". 'Mailable matter' is then defined as follows:

Post Office Act

'mailable matter' includes anything that by this Act or any regulations may be sent by post.

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'mailable matter' includes any message, information, funds or goods that by this Act or the regulations may be transmitted by post.

These definitions create a problem. The use of the word "includes" raises the legal question of whether the items listed in the Act (or Bill) and in the regulations are the only items that may be mailable matter, or whether these are merely some of the things that may be mailable matter.³ Paragraph 6(a) of the Act provides that the Postmaster General may make regulations, "prescribing, for the purposes of this Act, what is a letter and what is mailable matter and non-mailable matter".⁴

Since 'mail' means "mailable matter", and since the Postmaster General can regulate what is and what is not mailable matter, this provision in effect permits the Postmaster General to determine by regulation what is mail for the purposes of the Act. In fact, this power has only been used to define 'non-mailable matter'. No regulation exists which defines 'mailable matter'. By examining the Act and the regulations, it is thus possible to establish with reasonable clarity what is not mail. It is not always possible to say with equal clarity what is mail.

The classes of articles that are considered to be non-mailable matter are set out in the *Prohibited Mail Regulations*, the appropriate parts of which are found in Appendix E. It is sufficient to point out here a few of the more salient

3. For a case in which an expansive interpretation was given to the word "includes", see *R. v. Cartier*, *R. v. Libert* (1979), 43 C.C.C. (2d) 553. For a case in which a restrictive (exhaustive) interpretation was applied, see *R. v. Laramie* (1972), 9 C.C.C. (2d) 433.

4. Section 17(1) (a) of Bill C-42 provides: "The Corporation may . . . make regulations

(a) prescribing, for the purposes of this Act and the regulations, what is a letter and what is mailable matter, non-mailable matter and undeliverable mail;"

characteristics of non-mailable matter which suggest that in many cases it includes the types of items which postal authorities and law enforcement personnel might well be expected to have an interest in opening. These include:

- articles that by their nature or the manner in which they are packed may expose postal employees to danger;
- articles that may soil or damage other mail or post office equipment;
- explosive substances.

These categories are specified as being non-mailable matter for the purposes of the Post Office Act as well as for the purposes of the regulations. Such items, therefore, are not "mail". Thus, the provisions of the Post Office Act which prohibit interference with the mail as such (e.g., sections 58 and 59)⁵ do not apply. While this does not mean that interference with such items is always legal, it does mean that such interference is not necessarily in violation of the provisions of the Post Office Act.

The foregoing analysis can be summarized in three propositions:

- (1) What is referred to as mail in every day usage is often not mail for the purposes of the specific provisions of the Post Office Act concerning interference with the mail.
- (2) What constitutes mail for the purposes of the Post Office Act is not clearly defined in law, and is subject to regulations promulgated by the Postmaster General.
- (3) Certain types of items are specifically declared not to be mail for the purposes of the Post Office Act by the *Prohibited Mail Regulations*.⁶

In considering the legality of any interference with mail, it is essential that these propositions be kept in mind. Only interference with 'mail' as defined under the Post Office Act is of concern to this Commission.

Mail opening

Clearly, the opening of mail is not always illegal. In fact, to a limited extent, the Post Office Act specifically permits the opening of mail to protect its revenue, to assist users, and to protect the public. Since the legal aspect of mail opening hinges on its being an infringement of vested property rights,

5. Sections 40-41, Bill C-42.

6. Bill C-42 does not detract from the above remarks.

the first task in concluding whether the opening of mail is legal or illegal in any given case is to determine whose property the mail in question is. The second is to determine who is doing the opening. While the second determination is seldom difficult, the first sometimes is.

Mail not "in the course of post"

Ownership of items prior to deposit in the mail system normally resides in the sender. Opening an item without the consent of its owner, his agent or another person in lawful possession of it would therefore normally constitute both a criminal offence such as mischief under section 387(1)(c) of the Criminal Code (wilful interference with the lawful use, enjoyment, etc. of property) and a tort (trespass to property). It is not difficult to conceive of circumstances, however, in which opening such an item, even against the wishes of the person who owns it or is in possession of it, could be legally justified. It could, for example, be legally opened in the execution of a search warrant issued in accordance with section 443 of the Criminal Code, or during a search without warrant conducted in accordance with section 99 of the Criminal Code (searches for illegal weapons) or section 10 of the Narcotic Control Act (searches for illegal narcotics). A similar set of considerations governs the opening of items which have passed through the mail and have been delivered to the addressee.

Mail "in the course of post"

While the legal justifications for opening mail before it is deposited in the postal system apply with equal force to opening it after delivery, different considerations apply while the item is in the course of post. In the first place, the property rights to an item usually pass from the sender to the addressee at the time of mailing. However, this is not always so. The relevant provision of the Post Office Act is section 41. It states:

Subject to the provisions of this Act and the regulations respecting undeliverable mail, mailable matter becomes the property of the person to whom it is addressed when it is deposited in a post office.⁷

Two points must be noted. Section 41 refers only to mailable matter, and the proprietary interests of the addressee in such mailable matter are "subject to the provisions of the Act and the regulations respecting undeliverable mail". It leaves unanswered the question of who owns non-mailable matter which is deposited in the Post Office, and who owns mailable matter

7. Bill C-42 does not contain a similar provision.

which is in the course of post but which is "undeliverable mail". Because sections 44 and 45 provide for disposition of such items, it has to be assumed that the Department has an interest in these.

For the purposes of analysis, section 41 of the Post Office Act allows us to identify three distinct categories of material, two of which may be defined as 'mail' in a legal sense. These two are: deliverable mailable matter, and undeliverable mailable matter. The third category is non-mailable matter, and therefore not legally mail.

The provisions of the Post Office Act dealing with the legality of opening mail are of two kinds. There are provisions which expressly or implicitly authorize the opening of mail. There are those which expressly or implicitly forbid it. The application of these provisions to mail which is in the course of post varies according to the category of item: deliverable mailable matter; undeliverable mailable matter; non-mailable matter.

Provisions for opening mail

The most general authorization to open mail "in the course of post" is found in paragraph 5(1)(r)⁸ of the Post Office Act, which provides that the Postmaster General may:

determine in any particular case whether the conditions under which mailable matter may be sent by post have been complied with, and for such purpose may open any mail other than post letters.⁹

Subsection 5(3) of the Act permits the Postmaster General to delegate his authority to open mail "other than post letters" under paragraph 5(1)(r) to "assistant deputy postmasters general, regional general managers and directors of postal districts of the Post Office Department".

In the first place, it must be noted that the right to open mail under paragraph 5(1)(r) refers only to mail as defined in the Post Office Act. It does not, therefore, extend to non-mailable matter which, by definition, is not mail for the purposes of the Act.

Three other provisions of the Act are of particular relevance here. The first two permit the Postmaster General to make regulations prescribing what

8. An equivalent provision is found in section 17(1)(e) of Bill C-42.

9. Section 2(1) of the Act defines a 'post letter' as:

"any letter deposited at a post office, whether such letter is addressed to a real or fictitious person, is unaddressed, and whether intended for transmission by post or not, from the time of deposit at a post office to the time of delivery and includes any packet prepaid or payable at letter rate of postage".

Bill C-42 does not define 'post letter'.

is "mailable matter" and what is "non-mailable matter" (paragraph 6(a)) and to decide in any particular case whether an item is "mailable matter" or "non-mailable matter" (paragraph 5(1)(p)). The third provision is found in paragraph 6(g). It permits the Postmaster General to make regulations:

for excluding non-mailable matter from the mails and providing for the return to the sender or other disposition of non-mailable matter.

None of the regulations promulgated pursuant to these provisions, however, adequately resolve the basic problem. They nowhere expressly confer any right to open items of mail in order to ascertain if they contain "non-mailable matter". It would seem, therefore, that the authority to open mail (other than post letters) to determine whether it is, indeed, mailable matter can only be derived from a combination of two statutes. The general provision of paragraph 5(1)(p) of the Post Office Act allows the Postmaster General, an assistant deputy postmaster general or a director of the Post Office Department (see subsection 5(4)) to "determine in any particular case what is a letter, mailable matter or non-mailable matter". Since "non-mailable matter" may not always be readily identified by external inspection, it is then necessary to invoke subsection 26(2) of the Interpretation Act, which provides that:

Where power is given to a person, officer or functionary, to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing.

It can be reasonably argued that subsection 26(2) of the Interpretation Act authorizes the opening of mail for the purposes of exercising the power granted under paragraph 5(1)(p) of the Post Office Act. Bill C-42 is much clearer in this regard. In fact, the wording of section 17(1)(e) of the Bill appears to resolve the problem.

While paragraph 5(1)(r) does not authorize the opening of an item to determine whether it contains mailable matter, it does authorize the opening of mailable matter other than post letters in order to determine whether it complies with conditions under which it may be sent by post. It extends only to postal officials. It does not extend to other persons. Similarly it does not bestow authority to open mail for any purpose other than to determine whether conditions for mailing have been complied with. If there is authority for others to open mail or for postal officials to open mail for other purposes, it will have to be found elsewhere in the Post Office Act.

Section 7 of the Act (section 39(1) of Bill C-42) deals with the procedures which may be invoked whenever the Postmaster General believes on reasonable grounds that any person,

Post Office Act

- (a) is, by means of the mails
- (i) committing or attempting to commit an offence, or
- (ii) aiding, counselling or procuring any person to commit an offence, or
- (b) with intent to commit an offence, is using the mails for the purpose of accomplishing his object.

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- (a) is, by means of mail,
- (i) committing or attempting to commit an offence, or
- (ii) aiding, abetting, counselling or procuring any other person to commit an offence,
- (b) with intent to commit an offence, is using mail to accomplish his object, or
- (c) is, by means other than mail, aiding, abetting, counselling or procuring any other person to commit an offence by means of mail.

The broad reference to "offences" generally in section 7 extends its applicability to any law, be it federal, provincial or municipal.¹⁰ The Postmaster General may prohibit the delivery of mail to or from the person concerned. Subsection 8(b) authorizes the Postmaster General to "detain or return to the sender any mail directed to the person affected and anything deposited at a post office by the person affected". Subsection 8(c) also permits the Postmaster General to,

declare any mail detained pursuant to paragraph (b) to be undeliverable mail, and any mail so declared to be undeliverable mail shall be dealt with under the regulations relating thereto.

The handling procedures for undeliverable mail are complex, and vary according to whether there is a sufficient or correct address or return address on the cover, whether the address is inside or outside Canada, and what class of mail is involved. Section 11 of the *Undeliverable and Redirected Mail Regulations* provides that:

Undeliverable mail that cannot be redirected or returned to the sender owing to an insufficient or incorrect address on the cover

10. For cases supporting such an interpretation, see *R. v. Somerville*, (1963) 3 C.C.C. 240; *R. v. Howard* (1972), 18 C.R.N.S. 395; and *R. v. Stratton* (1978), 3 C.R. (3d) 289.

of the mail shall be sent to the appropriate regional undeliverable mail office and

- (a) opened to determine whether it contains the address of the sender or addressee, in the case of mail posted in Canada;

This is the only provision in the *Undeliverable and Redirected Mail Regulations* which expressly confers authority to open mail.

Section 19 of the Regulations provides that:

Notwithstanding anything in these Regulations, undeliverable mail that is found to be non-mailable matter pursuant to the Prohibited Mail Regulations shall be dealt with in accordance with those Regulations.

The fact that this section places non-mailable matter under the *Prohibited Mail Regulations* provides little help on the question of mail opening. These Regulations contain no provisions expressly authorizing the opening of mail. Authority to open mail under these regulations must either be implied from the provisions for the destruction and other disposition of non-mailable matter, or by invoking subsection 26(2) of the Interpretation Act.

Subsection 7(5) of the Act allows any mail detained pursuant to subsection 7(8)¹¹ to be delivered to a Board of Review established to review a prohibition order made under that section. The Board of Review may open and examine such mail with the consent of the person against whom the prohibition order has been made.

Another provision of the Post Office Act which appears to confer a limited right to open mail which is in the course of post is section 14, which provides that:

Post Office Act

14. Subject to any regulations permitting the payment of postage by the addressee, and the provisions of any agreement or arrangement referred to in paragraph 5(1)(j) any post letter on which no postage has been paid by the sender shall be deemed

Bill C-42

17(1) The Corporation permitting may... make regulations

- (f) providing for the opening of mail for the determination in any particular case whether the mail is undeliverable mail;

11. Subsection 39(7) of Bill C-42.

to be and shall be dealt with as undeliverable mail.¹²

(g) providing for the disposition of non-mailable matter, undeliverable mail and mail on which sufficient postage is not paid, including the disposition of any thing found therein;¹³

Section 44 of the Act¹⁴ furthermore provides that:

All undeliverable mail and all non-mailable matter found in the mails shall be sent to the section of the Department established by the Postmaster General for the receipt thereof and shall be dealt with as provided in the regulations.

And section 2(1) of the Act¹⁵ provides that:

'Undeliverable mail' means mail that for any cause cannot be delivered to the addressee and includes any mail the delivery of which is prohibited by law or is refused by the addressee or on which postage due is not paid by the sender on demand.

The same definition of 'undeliverable mail' appears in section 2 of the *Undeliverable and Redirected Mail Regulations*.

Any further right to open mail pursuant to these sets of regulations, can only be implied, possibly with the aid of subsection 26(2) of the Interpretation Act. It is noteworthy, however, that by defining 'undeliverable mail' to include "any mail the delivery of which is prohibited by law", the Post Office Act and regulations include in the category of "undeliverable mail" most of the items which postal authorities and law enforcement personnel might be expected to have some interest in opening. The delivery of such substances as illicit narcotic drugs, prohibited firearms and illegal explosive substances is certainly "prohibited by law" (see, for example, sections 80 and 92 of the Criminal Code). Any right to open mail which may be implied from the terms of the regulations, however, clearly accrues only to Post Office officials and not to other persons.

12. Paragraph 5(1)(m) of the Post Office Act authorizes the Postmaster General to "establish a section of the Department for the receipt and disposition, in accordance with this Act and the regulations, of non-mailable matter and undeliverable mail".

13. These provisions would resolve much of the current uncertainties as to the right to open mail (at least mail other than "letter") to establish whether it is "non-mailable matter" or "undeliverable mail".

14. Section 39(8) of Bill C-42.

15. Bill C-42 contains no similar provision.

Mail opening by Customs officers

Section 46 of the Post Office Act (Section 38 of Bill C-42) deals with the inspection of in-coming international mail for the purposes of importation and customs controls. The section provides:

Post Office Act

(1) All mail from a country other than Canada containing or suspected to contain anything subject to customs or other import duties or tolls or anything the importation of which is prohibited shall be submitted to a customs officer for examination.

(2) A customs officer may open any mail, other than letters, submitted to him under this section, and may

(a) cause letters to be opened in his presence by the addressee thereof or a person authorized by the addressee; or

(b) at the option of the addressee, open letters himself with the written permission of the addressee thereof;

and where the addressee of any letter cannot be found or where he refuses to open the letter, the customs officer shall return the letter to the Canada Post Office and it shall be dealt with as undeliverable mail in accordance with the regulations.

(3) A customs officer shall, in accordance with the laws relating to customs and the importa-

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(a) cause letters to be opened in his presence by the addressee thereof or a person authorized by the addressee; or

(b) at the option of the addressee, open letters himself with the written permission of the addressee thereof;

and where the addressee of any letter cannot be found or where he refuses to open the letter, the customs officer shall return the letter to the Corporation and it shall be dealt with as undeliverable mail in accordance with the regulations.

(3) A customs officer shall deal with all mail submitted to him under this section in accordance

tion of goods, deal with all mail submitted to him under this section, and upon compliance with such laws, may deliver such mail to the addressee, subject to the payment of any postage due thereon, or may return it to the Canada Post Office for transmission through the post in the usual way.

(4) Any non-mailable matter found by a customs officer in any mail submitted to him under this section shall be transmitted to the Postmaster General to be dealt with in accordance with the regulations.

with the laws relating to customs and the importation of goods and, subject to such laws, shall deliver such mail to the addressee thereof, on payment of any postage due thereon, or shall return it to the Corporation.

(4) Any non-mailable matter found by a customs officer in any mail made available to him under this section shall be dealt with in accordance with the regulations.

The right to open mail conferred by subsection 46(2) is limited in a number of important ways. First, subsection 46(1), limits it to incoming international mail. Secondly, a distinction is made between letters and other categories of mail. The Post Office Act, however, contains no definition of what is a letter and, therefore, what precisely is covered by subsection 46(2) is unclear, although paragraph 5(1)(p) of the Act¹⁶ permits postal officials to decide in particular cases whether or not an item is a "letter".

The absence of a definition of "letter" is a major irritant between Post Office senior management, who are responsible for the integrity of the mail, and Customs officers, who are responsible for protecting Customs duties and accordingly want broad access to international mail. The Commission has noted correspondence in which the Security and Investigation Services of the Post Office expressed concern that Customs officers were opening letters without the permission of the addressee.

Customs officials instructed their officers in October, 1978, that they could open first class mail and subsequently advise the addressee by attaching a complaints' form to the item. The Post Office objected strenuously. The Commission was also informed that these instructions to Customs officers were consistent with internal guidelines distributed to members

16. Section 17(1)(a) of Bill C-42.

of the Royal Canadian Mounted Police (who are also Customs officers). The Post Office senior management refused to accept this procedure and instructed its employees not to comply with it.

The Deputy Postmaster General wrote to the Deputy Minister of National Revenue (Customs and Excise) suggesting that where a doubt existed, it should be resolved in favour of treating the item as a "letter".

The Deputy Postmaster General further suggested:

I would also request that any item of first class mail that is opened bear some marking which indicates that it has been opened and examined by Customs officials.

While I am aware that this will not fully satisfy your operating needs or your concerns regarding the applicability of the constraints imposed by legislation on narcotic and similar investigations, it is the most reasonable approach in the absence of clear legislative authority to enable your officials to open all mail.

The absence of agreement gave rise, in 1979, to Customs Directive D-44/79 entitled "Customs Procedure for Examination of Goods Arriving by Mail". It reads in part:

For the purposes of this instruction, letter is interpreted to mean any item which could reasonably be assumed to consist of correspondence as its principal content and which is in an envelope. Accordingly:

- (1) Customs Officers may for purposes of examination, open without the addressee's permission, anything which is in a packet or a parcel, and which the average person would consider to be goods or things, and any other item which is not a letter as defined in this instruction.

In the past, the Post Office relied on a common sense definition of 'letter' to mean first class mail. Since an object of up to 30kg can now be sent first class, this definition has become impractical. On the other hand, items which appear to contain only, or mainly, written material and which are in an envelope should, from a common sense point of view, be immune from arbitrary inspection by Customs officers.

Like other provisions of the Act conferring powers to open mail, section 46 specifically uses the word 'mail'. By definition, therefore, it is not applicable to "non-mailable matter". Subsection 46(4) makes it clear that "non-mailable matter is not subject to being opened by Customs officers but is to be transmitted to the Postmaster General to be dealt with in accordance with the Prohibited Mail Regulations".

Provisions which prohibit the opening of mail

Three sections (58, 59 and 43) of the Post Office Act contain direct or indirect prohibitions against opening mail. Section 58 of the Post Office Act (Section 40 of Bill C-42) provides that:

Post Office Act

Every person is guilty of an indictable offence who unlawfully opens or wilfully keeps, secretes, delays or detains, or procures, or suffers to be unlawfully opened, kept, secreted, or detained, any mail bag, post letters, or other article of mail, or any receptacle authorized by the Postmaster General for the deposit of mail, whether the same came into the possession of the offender by finding or otherwise.

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Every person commits an offence who, without lawful excuse, knowingly opens, keeps, secretes, delays or detains, or permits to be opened, kept, secreted, delayed or detained, any mail bag or mail or any receptacle or device authorized by the Corporation for the deposit of mail.

Section 58 is the only provision in the Post Office Act which expressly prohibits the opening of mail. The different wording used in Bill C-42 is important. The use of the phrase "... without lawful excuse knowingly ... " makes the prosecution of the offence more difficult and derogates from the principle of the sanctity of the mail.

The opening of mail in accordance with the explicit legal authorizations discussed earlier in this chapter clearly does not constitute a violation of section 58. It has been noted, however, that some legal provisions which do not expressly authorize the opening of mail, may provide implicit lawful justification for doing so. Whether such provisions outweigh the liability created by section 58 of the Act, however, is unclear.

The exact scope of what would constitute unlawfully opening mail for the purposes of section 58 of the Act, can only be properly appreciated in light of the enigmatic and troublesome section 43 of the Post Office Act which provides that:

Notwithstanding anything in any other Act or law, nothing is liable to demand, seizure or detention while in the course of post, except as provided in this Act or the regulation.¹⁷

17. No similar provision exists in Bill C-42.

The relationship of this provision to the prohibition on the opening of mail in section 58 is determined by whether the opening of mail, in itself, constitutes "demand, seizure or detention". There has been no clear determination of this issue to date.

Any opening of mail which involves "the demand, seizure or detention" of anything while it is "in the course of post" is unlawful for the purposes of section 58 of the Act, unless it is specifically permitted by some other provision of the Post Office Act or the regulations. The opening words of section 43 ("Notwithstanding anything in any other Act or law") may negate any argument that seeks to justify the opening of mail under provisions of law other than those of the Post Office Act or regulations thereunder, insofar as such mail opening could be said to constitute "demand, seizure or detention" of anything while it is "in the course of post". Opening mail cannot be justified, for instance, by search warrants or powers of search without warrant under the Criminal Code, or powers of search and inspection under the Customs Act, or in terms of the defence of necessity, if it constitutes the "demand, seizure or detention" of anything while it is "in the course of post".

Section 43 of the Act is not the only limitation on "lawfulness" that must be considered in looking at section 58. Subsection 387(1) of the Criminal Code provides that:

Every one commits mischief who wilfully

- (a) destroys or damages property,
- (b) renders property dangerous, useless, inoperative or ineffective,
- (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or
- (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Whether or not the opening of mail in any given case is "unlawful" as a result of subsection 387(1) of the Criminal Code, depends on who has the property rights and who is doing the opening. Presumably, even the common law of trespass and detainment as it relates to chattels (including mail) could also determine the "lawfulness" of opening mail for the purposes of section 58 of the Post Office Act. Clearly it is extremely difficult to determine with confidence the legal limits of the prohibition against mail opening.

Mail covers and controlled deliveries

If the practice of law enforcement authorities in seeking the cooperation of postal employees for mail cover operations or controlled deliveries offends

no other section of the Post Office Act it may offend section 59 (section 41 of Bill C-42) which provides that:

Post Office Act — Section 59

Every person is guilty of an indictable offence who abandons, obstructs or wilfully delays the passing or progress of any mail or mail conveyance.

Bill C-42 — Section 41

Every person commits an offence who, without lawful excuse, knowingly abandons, misdirects, obstructs, delays or detains the progress of any mail or mail conveyance.

To the extent that reading mail covers and controlling deliveries obstruct or wilfully delay the mail, these actions are prohibited by section 59. It must be noted, however, that the section, like the others discussed above, refers specifically to "mail".

The absence of the adverb "unlawfully" in section 59 removes the justifications derived from other sections and other statutes that may be applied to section 58. Indeed, even if the opening of mail is found to be "lawful" in terms of section 43 and 58, it may still be an offence under section 59 if it obstructs or wilfully delays the passing or progress of the mail in question.

In summary, between them, sections 58 and 59¹⁸ create the following offences which are of some relevance to the legality of interfering with the mail:

Section 58: unlawfully opening mail;
 wilfully keeping mail;
 wilfully secreting mail;
 wilfully delaying mail;
 wilfully detaining mail;
 procuring or suffering mail
 to be unlawfully opened,
 kept, secreted or detained.

Section 59: abandoning mail;
 obstructing mail;

And, by implication: reading covers if a delay is involved; participating in a controlled delivery, if delaying or detaining mail is involved.

18. Sections 40 and 41 of Bill C-42.

Of these possible offences,¹⁹ only the first has been considered in detail in this chapter. It is not intended to subject each of the others to a similarly detailed analysis. Certain general comments, however, must be made about the scope of these offences.

It is not difficult to see how the activities associated with opening, inspecting and seizing the contents of mail could easily amount to the commission of most, if not all, of the offences established by section 58 and 59. Likewise, reading covers or participating in a controlled delivery could be an offence against section 59 of the Act. Recent *dicta* by a unanimous Supreme Court of Canada make it reasonably clear that the term "wilfully", when used in an offence-creating provision such as sections 58 and 59, normally requires little more than proving full *actus reus* with respect to the offence.²⁰

Secondly, whatever appearances to the contrary sections 58 and 59 may present, normal rules of statutory interpretation do not permit them to make illegal an action specifically authorized by some other section of the Post Office Act. Thus, for instance, whether or not opening mail wilfully delays it if the opening is authorized elsewhere in the Act (or in the regulations) it will not constitute an offence under section 58 or 59.

Thirdly, it has sometimes been suggested that provided that opening of mail or reading of covers is accomplished without removing it from the Post Office premises where it is normally handled, such action would probably not be regarded as delaying, detaining, obstructing, keeping, etc., as those terms are used in sections 58 and 59. While there are no reported judicial decisions to confirm or deny this interpretation there are some strong reasons for arguing that it is probably not correct. More plausible would be an interpretation which takes into account the normal process of mail handling and the objectives of the Post Office. While these objectives are not specifically elaborated in the Post Office Act,²¹ it may be inferred from the general provisions of the Act that they relate to the efficient and effective collection, conveyance and delivery of mail.²² In this context, actions undertaken by Post Office personnel as part of the normal process of mail handling, and which are not in conflict with the objectives of collecting,

19. In the light of the Supreme Court of Canada's decision in *R. v. Sault Ste. Marie* (1978), 3 C.R. (3d) 30, it is arguable that sections 58 and 59 should not be construed as constituting a number of distinguishable offences, but as listing several means of committing the same offence. The implications of the Supreme Court's ruling in this regard, however, remain somewhat unclear.

20. See *R. v. Sault Ste. Marie* (1978), 3 C.R. (3d) 30.

21. It is noteworthy that section 5 of Bill C-42, proposing a new Canada Post Corporation Act, does enumerate the "objects" of the proposed new Corporation.

22. Cf. subsection 8(1) of the Post Office Act.

conveying and delivering mail efficiently, will not be construed as delay, detention, obstruction, etc., under sections 58 and 59. On the other hand, interference which is not part of the normal process of mail handling, and which is undertaken for purposes other than those primary objectives of the Post Office (e.g., for the enforcement of criminal laws or the gathering of national security intelligence information), would normally be regarded as delay, detention, obstruction, etc., within the meaning of sections 58 and 59. This would be so whether the actions took place on Post Office premises or not, and whether done by Post Office officials or others.

The protection of telephone communications by law is viewed by many as extending to information about the origin and destination of calls. In fact, if the confidentiality of this information were not maintained the protection afforded to privacy of communications would have much less value. By analogy, the sanctity of the mail requires that addresses appearing on mail covers remain private.

Interception of mail, of course, may always be made with the prior consent of the addressee. Certain Canadian and foreign dignitaries have requested an examination of their mail with a view to intercepting mail containing explosives or dangerous substances. These interceptions with prior consent are in no way unlawful.

Conclusions

Current law governing the legality of mail opening is contained in an array of statutory and common law provisions whose meaning and application is often unclear and uncertain. Not only is the terminology used often vague in its implications for the legality of mail opening, but some of the essential terms have not been defined at all or are subject to interpretation by regulation or by official discretion in particular cases. Furthermore, even when defined in the Post Office Act itself, some of the terms are used in ways which are inconsistent with the definitions. For instance, despite the fact that 'mail' is defined in subsection 2(1) of the Act as meaning "mailable matter", other provisions of the Act and of the regulations refer to the possibility of "non-mailable matter" being found in the "mail", thus implying that the term "mail", when used in the Act or the regulations does not always mean only "mailable matter". Since so much of the statutory law governing the legality of mail opening revolves around whether or not items are deliverable mail, undeliverable mail or non-mailable matter, this kind of inconsistency adds to the confusion surrounding the limits of legal powers to open mail.

The confusion evident in those provisions which expressly or implicitly authorize the opening of mail is compounded by the fact that only one of the three provisions in the Post Office Act which may be interpreted as prohibiting the opening of mail in certain circumstances expressly refers to the opening of mail. Even this provision qualifies the term "opens" with the term "unlawfully", the precise application of which is difficult to establish in any given case.

The lack of clarity in the statutory provisions governing the opening of mail creates serious problems. For the judiciary, it results in the necessity of balancing social values. On the one hand, the Court must safeguard those basic rights referred to in the Canadian Bill of Rights and those which have accrued in common law. On the other hand, the Court has to be sensitive to the rights of society in general and maintain a proper balance between these two competing interests. The interpretation of statutes in Canada has been embarked upon with a great deal of prudence by judges and with the underlying principle that a judge does not make laws but merely gives meaning and interpretation to laws.

For postal authorities and others who may have a legitimate interest in opening mail under certain circumstances, and who are not normally trained in sophisticated legal analysis, this lack of clarity results in a legal régime with which it is virtually impossible to comply with any real confidence. Clearly, from either of these perspectives (and from that of the ordinary citizen who may legitimately desire to know under what circumstances his mail may be opened, and by whom) a substantial measure of clarification and simplification of the law is called for.

Peace Officer Status — Recommendations

Given the division of powers between the federal and provincial governments in the field of criminal justice, the views of the provincial governments must be carefully considered in deciding whether or not to grant such peace officer status to postal inspectors. The provincial attorneys-general are the chief law officers in the provinces. Special weight must be given to the difficulties which can arise from federal employees exercising the powers of peace officers outside the control and review of the attorneys-general.

Provincial attorneys-general who expressed their views to the Commission acknowledged that the federal government has an obligation to Canadian taxpayers to protect its property and assets. In doing so, however, it ought to restrict the granting of peace officer status (or the powers usually reserved for peace officers) to those situations where the security requirement clearly outweighs all other jurisdictional and practical considerations. It must always consider whether the task can be accomplished without granting special powers. A corollary of this principle is that persons seeking special powers should first exhaust all other avenues in performing the assigned task. Only where the general powers given to those "authorized" to protect property are clearly insufficient should the granting of peace officer status be considered. As stated by the Royal Commission of Inquiry into Civil Rights in Ontario, (Report No.1, Vol.2, page 727):

- (1) Is the power necessary?
- (2) Will the exercise of the power impose a punishment out of all proportion to the penalty that might be imposed by a judicial officer if the person is found guilty of the alleged offence?

The granting of peace officer status creates a requirement for ensuring that those to whom it is granted have the necessary training, competence, common law or the legislated rights of Canadian citizens.

The accountability of persons designated as peace officers must be clearly structured to avoid potential conflict when the prosecutorial process is invoked. Managerial or other considerations not based on the principles of criminal justice must not be permitted to interfere with the discharge of the duties of peace officers. By the same token, those charged with enforcing

the laws of this country, whether it be the provisions of the Criminal Code or of other federal statutes, must have adequate protection for errors made in good faith and without improper motive.

Whatever security programs are devised for the Post Office, some volume of wilful and criminal loss will occur. The losses from criminal activities directed against Post Office property will continue to be high unless steps are taken to prevent their occurrence and adequate enforcement measures are taken to control such activities.

In its analysis, the Commission noted the views expressed by attorneys-general and has given them careful consideration in formulating its recommendations. Having acknowledged its sensitivity to the duality of the federal and provincial presence in the field of criminal law, the Commission does not feel bound to frame its proposals solely by that criterion. The principle of the division of powers is but one of a myriad of considerations, albeit an important one.

The attorneys-general who made submissions, while objecting to the proliferation of police forces, recognized the need for the federal government to take proper and adequate steps to protect its assets. The safeguarding of federal assets is clearly in the best interest of all provincial attorneys-general. Whenever, as a result of its vulnerability, Canadian government property or assets are stolen, a crime is committed. It is not within the Commission's mandate to make recommendations for coordinating the protection of all federal assets. Nonetheless, it must be emphasized that remedial measures are needed and that these measures will require the general support of provincial attorneys-general.

The Ministry of the Attorney-General of British Columbia, through its Deputy Attorney General, stated to the Commission:

There is a legitimate interest in supervisory employees having sufficient authority to maintain the security of the business (i.e. the Post Office). There is, as well, a legitimate operational interest in collecting information of a non-criminal nature.... These examples are all legitimate in-house security functions.

Ideally, the federal government should coordinate the protection of all its property and revenue. As expressed elsewhere in this report, the present system of departmental protection is inadequate in many ways. Many departments of government have set up their own mechanisms and are developing their own approaches to security without central coordination. Other departments simply have made no provision for adequate security. Preventive measures are often non-existent and security activities merely reactive. As crime becomes more complex and sophisticated, the existing

uncoordinated approach to security leaves the government vulnerable. The long-term consequences are fraught with danger.

In the past, the federal government has granted peace officer powers rather indiscriminately. As noted elsewhere in this report, 162 federal statutes including the Criminal Code bestow on officials powers usually reserved for peace officers. Clearly, the provincial attorneys-general have cause for concern. The provinces, however, are not without fault. They, too, appear to have conferred peace officer powers without full consideration of the impact upon civil rights of citizens. A case in point is the Ontario Public Works Protection Act which gives a security guard the power of search and arrest without warrant at all public works sites. No level of government should grant such powers before a full and complete assessment indicates that there is no available alternative. Although this Commission must refrain from making such a recommendation which is clearly beyond its mandate, it must emphasize that a full review of legislation granting peace officer powers is needed.

The questions to be decided by the Commission are, therefore, clear. Are the powers now available to employees of the Post Office's Security and Investigation Services Branch fully utilized by them? If they are, are these powers sufficient? If the powers are insufficient, what additional powers must be granted? Must postal inspectors have full peace officer powers or will lesser powers suffice? If some peace officer powers are to be granted, which are they to be? To what extent can these be delineated and circumscribed?

The most telling argument in favour of granting peace officer status to postal inspectors is without doubt the allegation that suspects often go unchallenged because of the limited powers of arrest available to postal inspectors.

The provisions of section 48 of the Post Office Act, as it now stands, are neither satisfactory nor appropriate to the needs of the Post Office. The appointment of investigators pursuant to that section is both complex and uncertain and needs to be clarified. While it gives every inspector the sweeping powers of a commissioner under the Inquiries Act, the Post Office has instructed its inspectors that they must not invoke these powers without specific authorization. Indeed, to the Commission's knowledge, the use of these extensive powers has been permitted only rarely. The powers of a commissioner are too extensive to be given to postal inspectors. They are far in excess of what is needed for the task.

The Commission is also concerned that those charged with protecting Post Office property and revenue be given a clear mandate to do so and that

they be protected as "persons administering and enforcing the law". The absence of such protection undermines the authority of inspectors and interferes with the proper discharge of their duty.

The first step in correcting this is to confer upon postal inspectors a specific mandate to protect the security of postal employees, Post Office property and revenue and the mail. In this way, postal inspectors would clearly become "persons authorized" under section 449(2) of the Criminal Code and would also gain the protection of section 25 *et seq.* of the Criminal Code with respect to "persons administering and enforcing the law".

While the postal unions were not in favour of extending full peace officer status to postal inspectors, their attitude was somewhat different when the powers discussed were limited in the manner set out above. The following exchange is of interest:

THE COMMISSIONER: Let's look at the "something else" for a second, Mr. Parrot. If instead of having Section 48 as it stands — and, again, anyone can just join in — if I were to recommend that Section 48 be removed and be replaced by the general duty of those persons, including all postal employees for that matter, with the primary duty being to protect the mail, the safety and security of employees and the mail, is that the type of thing that you are looking forward to?

In other words, instead of Section 48, suppose I were to recommend — I am not saying I will, but just supposing I were to do so — that it is the obligation of postal inspectors, or whatever name we may designate them by, to protect the mail and ensure its safety, including the security of employees and postal property, how would you react to that?

MR. PARROT: That looks, on the fact of it, in line with what we are saying. That is what we say they should have been up to now — people there for the security of the mail, for the security of the building, for us, and the property. That is what we felt should have been their role in the past.¹

The Commission therefore recommends that:

- POS 1 The appointment of postal inspectors continue to be provided for in the Post Office Act (and in Bill C-42).**
- POS 2 Postal inspectors be specifically authorized and directed by law to preserve and protect the security of all employees, the revenue and property of the Post Office and the mail.**
- POS 3 The powers of a commissioner under the Inquiries Act now granted to postal inspectors under section 48(3) of the Post Office Act be revoked.**

1. Transcript of evidence p.2554-2555.

As seen in an earlier chapter, the powers of arrest of postal inspectors as persons "authorized" to protect property and revenue are somewhat broader than those of ordinary citizens. If legislation and directives in this regard are insufficient, that deficiency ought to be corrected immediately. Powers of arrest may be related to past, present or future offences in the sense that a person may be arrested for an offence which he has committed, for an offence which he is "found committing", or for an offence which he is about to commit. A peace officer's power to arrest for 'past offences' is much more extensive than a postal inspector's. A peace officer may arrest without warrant anyone who has committed an indictable offence or anyone whom, on reasonable and probable grounds, he believes has committed an indictable offence or anyone for whom, on reasonable and probable grounds, he believes a warrant of arrest is in force. The power of arrest of a postal inspector for 'past offences' is limited to those persons who upon reasonable and probable grounds he believes have committed a criminal offence and are escaping fresh pursuit by lawful authority. There is no difference between the powers of arrest of peace officers and of postal inspectors for 'present offences'. The Criminal Code gives to both peace officers and "authorized" persons the same powers of arrest with respect to persons "found committing" an offence.

Peace officers have the power to arrest those about to commit an indictable offence. No one has strenuously argued that postal inspectors need to be able to arrest for such 'future offences'.

It is, then, in the area of 'past offences' that the argument for extending peace officer powers to postal inspectors has its most substantial merit. The most acute problem is in the area of criminal behaviour which has been observed through video equipment. As stated elsewhere in the report, the requirement of the Criminal Code for direct observation in order to arrest a person "found committing" an offence poses problems when electronic surveillance equipment is being used. In effect, the use of such devices moves an action from being a 'present offence' to being a 'past offence' for the purposes of arrest. It is here, postal inspectors argue, that they most need the powers of arrest that are granted to peace officers.

While the weight of this argument is not as overwhelming as the proponents of peace officer status believe it to be, it is sufficient to make the case for some additional power for postal inspectors not only attractive but compelling. That does not necessarily mean that postal inspectors require the full powers of peace officer status or even full power of arrest and search. The Commission has concluded that it is sufficient to extend to postal inspectors specific powers to detain upon reasonable and probable grounds

anyone who has committed a breach against the Post Office Act or other federal statutes except the Criminal Code. The Commission has noted the provisions of section 30 of the Criminal Code with respect to a breach of the peace and the power to interfere to prevent its continuation or renewal. These powers extend to postal inspectors. The Commission is of the view that inspectors could be further authorized to detain for 'past offences' in the Post Office Act. A person so detained could either be turned over to a peace officer or released after his identity has been established and the inspector has been assured that the offence will not be renewed or continued.

The Commission therefore recommends that:

POS 4 The Post Office Act (and Bill C-42) be amended to incorporate the right of postal inspectors to detain anyone who has committed an offence against the Post Office Act or other federal statutes, except the Criminal Code, where Post Office property, mail and revenue are affected.

The Manual of Information for Postal Inspectors, has at least one section which gives rise to concern. Section 125.5 reads as follows:

Citizen's Arrest (s.434 C.C. [now s.449]) can only be effected by a Postal Investigator who actually observes a person committing an indictable offence and, where feasible, consists of touching the person on the shoulder, or arm, identifying himself and stating clearly 'you are under arrest' or 'I arrest you in the name of the Queen' and gives reason for arrest (s.25 C.C.). This action is to be taken in such a manner as to avoid drawing undue attention and then delivering the prisoner as soon as possible to a Police Officer. The use of force or restraint is not advocated but if a person attempts to leave, it should be pointed out to him that in addition to the charges of which he has been made aware, he may also have to face a charge of avoiding or escaping lawful arrest.

This is inconsistent with the powers of postal inspectors. Citizens' arrests are hardly comparable to the powers granted an employee "authorized" to protect assets and revenue. A person "authorized" enjoys wider powers of arrest and the protection of the law. The Commission therefore recommends that:

POS 5 Section 125.5 of the *Manual of Information for Postal Inspectors* be redrafted to instruct postal inspectors on the powers of arrest vested in them as persons duly "authorized" under section 449 of the Criminal Code to protect the mail and the property and revenue of the Post Office.

Search of belongings and effects

The written directives to postal inspectors concerning the search of personal property including parcels, lockers, bags and other objects, brought on to Post Office property are inadequate. The right to search the personal property of employees is often defined by prior agreement or understanding. Similarly, the right to search the property of customers can be made a condition of entry to premises if proper notice is given. In order to protect employees, revenue, mail and assets of the Post Office, postal inspectors require the power to inspect personal belongings where there is reasonable suspicion of a criminal offence. This applies both to members of the public and employees who bring parcels, bags or other objects into Post Office premises. Likewise, inspectors should have the right to search the lockers of employees when there are reasonable and probable grounds to believe that a criminal offence has or will take place.

In a set of Plant Rules and Regulations from the Toronto area the Commission noted the following provisions which imply a limited right of security officers to search persons other than postal employees.

1. The right to challenge Post Office employees and non-Post Office employees while in Post Office buildings.
2. The right to determine if parcels in anyone's possession have been properly cleared according to regulations — otherwise, to detain the parcel until properly cleared.
3. The right to challenge drivers of vehicles entering or leaving the Post Office premises, to satisfy that the vehicle is furthering Post Office business.

The Commission is of the view that similar rules should be promulgated on a national level. Similarly, the Postal Standards and Guidelines or the *Manual of Information for Postal Inspectors* should be enlarged and should specifically mention the authority to search persons other than postal employees while in Post Office buildings or premises.

Elsewhere in this report there are recommendations for cooperation between management and labour for the development of preventive security procedures. One area where such cooperation could be extremely valuable to all is in working out procedures for the exercise of these rights of search. Postal inspectors certainly need training in the acceptable implementation of searches. At the same time, the Commission does not consider these rights to be subject to negotiation between employer and employee. These powers,

legally speaking, are not negotiable. The Commission, therefore, recommends that:

POS 6 Postal inspectors be authorized by law to search personal property and belongings of anyone on Post Office property where there are reasonable and probable grounds to believe:

- (a) that the person is in illegal possession of mail or revenue or property belonging to the Post Office; and**
- (b) that a person may be carrying an object dangerous to employees or members of the public.**

Because members of the general public and postal employees ought to be aware of the right of inspectors to inspect personal belongings brought into Post Office buildings, appropriate notice must be conveyed to that effect. It is recommended that:

POS 7 (a) The public be advised by appropriate notices displayed near the entrance to Post Office premises of the liability to search of personal articles brought on to Post Office premises;

- (b) employees be advised that as a term and condition of employment items carried within Post Office premises may be liable to search.**
- (c) employees be advised that Post Office lockers are Post Office property and are subject to search; and**
- (d) employees be required to acknowledge in writing their acceptance of these terms of employment.**

If in searching personal belongings of a member of the public or an employee, an inspector finds mail or articles belonging to the Post Office, or items likely to endanger employees, he must be able to seize and confiscate the item pending prosecution and disposition. The right to challenge an employee or a member of the general public with an open parcel or letter under suspicious circumstances and to confiscate the article must be conferred on postal inspectors. The Commission, therefore, recommends that:

POS 8 Postal inspectors be authorized by law to:

- (a) seize items which are the object of search;**
- (b) seize a parcel to determine whether it has been cleared according to regulations; and**
- (c) challenge an employee or a non-employee with a broken parcel or letter to inspect and confiscate it if necessary.**

The Commission further recommends that:

POS 9 The failure to submit an item for search to a postal inspector be grounds for management to take disciplinary action against employees and to expel members of the public from Post Office premises.

As noted elsewhere, a peace officer has a common law right to conduct a search of a person incidental to arrest. The availability of the same power to other persons making arrests has never been fully determined by the courts and at present rests on legal analogy and some judicial *obiter dicta* which support the analogy. As a general rule, if a postal employee is "found committing" an offence, it would seem reasonable that he be searched to preserve evidence and to prevent that person from endangering his life or the life of others.

Similarly, if a person is found committing an offence with an offensive weapon, it would be both unwise and reckless to expose others to the danger of physical harm by not searching that person.

Outside of these specific circumstances, the Commission has not been persuaded that there is any need to amend the Post Office Act to authorize greater powers to conduct searches of persons. Management may now, under the general heading of management rights, empower inspectors to conduct personal searches. These are usually conducted on a selective or random basis. The criteria for such searches have been fully analyzed in an earlier chapter and need not be explored here. The Commission, however, deplores the fact that there has not been adequate publication of policies and procedures in this regard. Neither the collective agreements nor the New Employees Information Kit reflect this right of management. The Commission therefore recommends that:

POS 10 The right of management to conduct personal searches be communicated to new employees through the information kit supplied to them and be publicized to other employees by memorandum.

Paragraph 121.1 of the *Manual of Information for Postal Inspectors* at present states:

Searches submitted to voluntarily and witnessed, may be conducted by Postal Investigators but extreme caution is to be exercised when females are involved (services of Police Matron should be enlisted) or juveniles are involved (parents or guardian should be present — see Manual Chapter dealing with Juveniles). Refusal to submit to voluntary search must be respected and require the services of Police Officer.

The Commission recommends that:

POS 11 Paragraph 121.1 of the *Manual of Information for Postal Inspectors* be redrafted to indicate more clearly to inspectors the circumstances and limitations under which they may conduct searches with or without consent.

The Commission heard considerable discussion of whether postal inspectors should be able to obtain search warrants under the provisions of

section 443 of the Criminal Code. There was also much discussion of whether postal inspectors should be present when peace officers execute search warrants that have been issued to them.

The Commission does not accept the view that postal inspectors cannot apply for a warrant of search under section 443 of the Criminal Code. The provisions of section 443 are quite specific. Subsection (1)(c) states that a justice may authorize "a person named therein . . . to search the building". It would be difficult for this Commission, in the execution of its mandate, to express a contrary view on so general a provision. Postal inspectors are legally entitled to apply for and be issued with search warrants.

The *Manual of Information for Postal Inspectors*, paragraph 121.3, provides that:

Postal Investigators have no authority to obtain or to act on a Search Warrant without the presence of the police and when the need for searching becomes necessary, the Police should be consulted.

This paragraph is simply inaccurate in suggesting that postal inspectors have no authority to obtain a search warrant. The Commission therefore recommends that:

POS 12 Paragraph 121.3 of the *Manual of Information for Postal Inspectors* be amended to reflect accurately the provisions of section 443 of the Criminal Code to the effect that a search warrant may be issued to a person who is not a peace officer.

The Commission does not wish to make a recommendation on the actual obtaining of search warrants. It can be argued with some merit that inspectors should be permitted by the Post Office to do so. They are sometimes the only persons with the necessary knowledge to swear out an affidavit in support of an application for a search warrant. Accordingly, it could be a service to the public police forces and a saving of time if inspectors were allowed to apply for warrants. This practice could be responsive and sensitive to local dictates and to the preferences of the public police forces in a jurisdiction.

For his own protection it would certainly be unwise for someone to execute a search warrant without the assistance of a peace officer. On the other hand, it would be counter-productive to specifically prohibit, as suggested by the unions, postal inspectors from being present when a search is being conducted. They have special expertise and knowledge of the mail which can be of assistance to a peace officer executing a warrant.

The subject of consent searches has been covered in an earlier chapter. The law is clear: anyone may consent to have his premises searched. It would be preferable, however, if postal inspectors making such searches were required to obtain consent in writing. The Commission therefore recommends that:

POS 13 A consent by a postal employee to the search of his premises by a postal inspector should be given in writing.

The problem of investigation is one which has caused the Commission much concern. There are three alternatives. First, postal inspectors could merely gather information to be passed on to the public police forces but not pursue investigations themselves. Secondly, they could be authorized to investigate offences under the Criminal Code in addition to offences under such federal statutes as the Post Office and the Financial Administration Acts. Thirdly, they could be permitted to investigate offences under the Post Office Act and other federal statutes but not the Criminal Code.

It is obvious that the first alternative would create problems. The interest of a municipal or provincial police force in investigating and pursuing a possible offence under the Post Office Act or the Financial Administration Act may be minimal. Given the resources available to them and the tasks assigned, it would be unreasonable to assume that local police forces would willingly undertake such investigation with much zeal.

Other quite different considerations affect the investigation of offences under the Criminal Code. The jurisdiction over these offences is clearly placed with the provincial attorneys-general and ought not to be encroached upon. The Commission's recommendation that these investigations be handled by the public police is presented in Chapter 8.

It follows, therefore, that the third alternative is the only practical course. Postal inspectors must continue to investigate offences under the Post Office Act, the Financial Administration Act and similar federal statutes. Further, it is reasonable that they should complete the investigation before seeking advice on possible prosecutions. Such offences never result in an arrest but are proceeded with by summons. The powers required for these investigations neither conflict with the views of provincial attorneys-general nor impact adversely on the civil rights of employees.

Investigators may ask questions but every person has the right not to reply. Whether the investigator is a peace officer or a postal inspector, that rule does not change. A number of allegations were made to the Commission about incidents in which rights were abused during the interrogation and questioning of suspects. There is no room for abusive or coercive methods in

the questioning of suspects. As persons in authority, postal inspectors should know that statements obtained by such methods are normally excluded from evidence by the courts.

The right to counsel is fundamentally associated with the right to remain silent. To refuse access to counsel is morally and legally wrong. The accusations of abuse are not numerous. If abuse occurs at all, however, it indicates a serious misunderstanding of the basic human and civil rights of employees.

The remedy for this type of problem is to be found in the training provided for inspectors. For the purposes of the present chapter, the Commission affirms that inspectors should receive training that instructs them in the law surrounding the admissibility of confessions, the right to counsel, the right to remain silent and the right of a person to be treated with dignity even when suspected of the most heinous crime. Postal inspectors equally need to be trained to protect themselves from unfair allegations by questioning a suspect only in the presence of witnesses. They should ensure that statements are properly recorded to avoid misinterpretation. Similarly, no one under suspicion or against whom inspectors hold incriminating evidence ought to be questioned without an adequate and full warning that they have the right to remain silent.

The issue of the 24-hour notice enshrined in the collective agreements is discussed elsewhere. It is worth noting, however, that failure to give such notice would not affect the receiving in evidence of a statement obtained in contravention of this provision. The issue is treated here as being of secondary importance since the Commission expresses elsewhere in the report its view that postal inspectors, except as witnesses, should never be involved in disciplinary proceedings against postal employees. Since the 24-hour rule is a disciplinary matter, it should not affect the work of postal inspectors.

In conclusion, and with specific reference to the order in the Commission's mandate to investigate and report upon the proposal to confer on postal inspectors the status of peace officer within the meaning of the Criminal Code, the Commission does not agree with the proposal. In the light of recommendations made in this chapter concerning the powers of arrest, detention, search and seizure, there is no requirement for peace officer status.

Mail opening — Recommendations

The sanctity of the mail in a free society is often taken for granted. This has been reflected in the fact that, until recently, when the need to protect the privacy of communications was discussed the examination invariably focussed on verbal as opposed to written communications. No one expressed concern about the sanctity of the mail. Only recently have political events, and particularly debate on national security issues, brought attention to the need to protect the privacy of written communications — to uphold the sanctity of the mail.

A good example of this easy acceptance is to be found in the background to the passing of the Protection of Privacy Act by Parliament. In 1969, the Report of the Canadian Committee on Corrections (known as the Ouimet Committee) expressed concern for the protection of communications. The Committee accepted that a certain degree of interference was warranted for law enforcement purposes, but only under strict control. The Report recommended that interference with private communications be placed under judicial control and ministerial accountability. After several years the Criminal Code was amended to reflect in part the recommendations of the Ouimet Committee. Part IV.1 of the Code, entitled "Invasion of Privacy" was enacted. The "invasion" dealt with, however, was confined to the interception of oral communications. It does not refer to any written form of communication.

Because the Post Office Act (and this is perpetuated in Bill C-42, an Act to establish the Canada Post Corporation) prohibited the interception of mail in any form, it was assumed that the mail was free from interference by law enforcement agencies and public police forces. Recent revelations in the United States and in Canada have changed that assumption. The public is aware of mail interception practices adopted by some law enforcement personnel. Public opinion has been aroused by the failure of those concerned to honour the principle of the sanctity of the mail.

The final report of the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, presided

over by Senator Church, examined letter opening conducted between 1940 and 1973. The committee found that throughout the period the Federal Bureau of Investigation and the Central Intelligence Agency opened letters in violation of the law. The report demonstrates the excesses which may occur when no restraint is imposed by law and no provision is made for judicial and ministerial control. These agencies covertly opened and photographed letters being carried by first class mail. In one program alone during that 33-year period, more than 215,000 communications were intercepted, photographed, indexed, filed and the information disseminated to various agencies. This practice has now been brought under strict judicial control in the United States.

When it originated the domestic mail opening program of the C.I.A. and the F.B.I. had legitimate wartime targets. The Select Committee reported that, when it was halted in 1973, the targets included Senators, Congressmen, journalists, some dissidents (some selected on the basis of personal taste) and even a Presidential candidate. It was noted by the Select Committee that only one of the letters opened in the whole 33 years of the operation led to a criminal charge.

Mail opening activities have taken place in Canada — although apparently not to the same extent. The experience of others, however, should be fair warning of what can happen. If the sanctity of the mail is to be recognized, it ought to be legislated. If there are to be exceptions they ought to be conferred by legislation and the power exercised under the strictest control and with full accountability.

The Commission accepts that there may be issues of national security that require the interception of mail. Similarly, if there are reasonable and probable grounds to believe that the mail is being used to commit a criminal offence, or that it contains some device or substance which poses an immediate threat to life, then it should be liable to opening and disposal. What must be decided is who should be authorized to open mail, for what purposes, under whose control and who shall be held accountable.

The Post Office Act permits the opening of some mail by postal employees and Customs officers under certain circumstances. It does not permit the opening or interference with any class of mail by anyone else except the addressee.

The concept of the sanctity of the mail is a value of our society that needs to be protected. To permit it to be abused by anyone is to undermine our basic freedom. What can begin as a legitimate exercise, for generally accepted reasons, may soon become routine and subject to abuse.

Postal employees should be reminded continually of the sanctity of the mail. Neither the present Post Office Act nor Bill C-42 states this principle. There should be a general provision reflecting the obligation of all postal employees to preserve and protect the sanctity of all mail in the custody of the Post Office. The Commission recommends that:

MOP 1 The Post Office Act (or Bill C-42) be amended by inserting a section on the sanctity of the mail; and that employees be charged with the obligation to preserve and protect the security of all mail in their custody from unauthorized opening, inspection or reading of contents or covers, tampering, delay or other unauthorized acts.

There is a general prohibition against the opening of sealed mail in the Post Office Act. One effect of this prohibition is that the police cannot legally open mail. The Commission notes with concern, however, that the prohibition against mail opening contained in Bill C-42 uses different wording. Where the Post Office Act makes it an "indictable offence" to open mail "unlawfully", Bill C-42 provides that it is "an offence" to open mail "without lawful excuse, knowingly". This change in wording may cast doubt on whether the previous prohibition against mail opening has been reduced. That doubt ought to be dispelled by changing the wording of the prohibition in Bill C-42 to make it identical with that in the present Post Office Act. The Commission recommends:

MOP 2 Section 40 of Bill C-42 be amended by deleting the words "commits an offence who, without lawful excuse, knowingly..." and substituting the words "is guilty of an indictable offence who unlawfully..."

It has been suggested that since reading mail covers (and making controlled deliveries) is not specifically prohibited in the Post Office Act, it is permissible. The Commission does not agree. There is an inherent right in our society to privacy in our communications — including privacy about with whom we correspond. Reading mail covers interferes with that privacy. It also interferes with the free flow of mail, and that is forbidden. Although it may be necessary to make some exceptions, the Commission is of the view that there should be a general prohibition against reading mail covers in order to obtain information for purposes other than the delivery of the mail. The Commission recommends that:

MOP 3 The Post Office Act (or Bill C-42) be amended to generally prohibit the reading of outside covers of any class of mail in order to obtain information for purposes other than the delivery of the mail.

Exceptions to this prohibition are justified on the grounds that although society has an interest in protecting the privacy of mail, it has an equally

strong interest in detecting crime. While the detection of crime does not necessarily overrule the basic right of privacy, willingness to permit interference with the mail under certain conditions may be considered a logical extension of society's acceptance of controlled interception of verbal communications. Verbal communications may now be intercepted under section 178.1 of the Criminal Code with judicial permission. The Commission is of the view that interception of written communications could also be permitted under judicial control. The interception of written communications requires at least the same safeguards as the interception of oral communications with respect to authorization, reporting and notification. The Commission, therefore, recommends that:

MOP 4 Except for those Post Office and Customs purposes already specified in the Post Office Act, the Act and the Criminal Code be amended so that other opening of mail and reading of mail covers be by judicial order only.

The Commission is of the view that no mail of any class ought to be liable to demand, seizure or detention while in the course of post except by due process of law. Section 43 of the Post Office Act at present provides this protection. Regrettably, Bill C-42 does not contain a similar section. If Parliament permits the interception of mail with the controls recommended above, there should be no other way for law enforcement officers to intercept mail or delay it by controlling its delivery. If Parliament does not deem it necessary to permit the interception of mail even under the controls recommended then it is all the more essential to ensure that an easier method of interception is not available. It has been agreed that controlling the delivery of mail for investigative purposes does not constitute a "demand, seizure or detention". The Commission does not agree. To make this clear in the law, the Commission recommends that:

MOP 5 The Post Office Act (or Bill C-42) be amended to include a specific prohibition on controlled deliveries unless authorized by judicial order.

MOP 6 Bill C-42 be amended by adding a provision to the effect that nothing is liable to demand, seizure or detention while in the course of post except as provided in the Act and in the Criminal Code.

MOP 7 (a) The existing provisions of the Post Office Act for the opening of mail for postal and Customs purposes be continued in the Act and in Bill C-42;

(b) the Post Office Act (or Bill C-42) be amended to require a judicial order for all other mail opening and reading of mail covers; and

(c) the Criminal Code be amended to extend the provisions of section 178.1 to encompass written communications.

The mandate of the Commission does not extend to considering what reasons of national security might justify the opening of mail and other forms of interception. Another Commission has been assigned that task. On this matter, the Commission does not have the evidence that would be required to comment on whether there are sufficient reasons of national security to justify the interception of mail. There is, however, enough evidence of the potential for abuse for the Commission to conclude that if the interception of mail for reasons of national security is permitted, it should be in accordance with the above recommendations for judicial control and ministerial accountability.

The Commission is also aware that mail is sometimes examined with the consent of addressees where there is a perceived danger that it might contain explosives or other dangerous substances (for example, a suspected letter bomb). Such interception of mail is beyond comment by the Commission. There is obviously no reason why mail should not be examined with the consent of the addressee.

The Post Office Act and Bill C-42 permit postal employees to open mail in a number of circumstances. These circumstances can be conveniently grouped under four categories.

- (1) to intercept and open undeliverable mail where there is an insufficient or incorrect address to permit delivery;
- (2) to determine whether mail other than "post letters" complies with the conditions set for mailing by Canada Post with respect to mailable matter, i.e. whether it can be transmitted and whether the rate fixed for mailing has been observed;
- (3) to intercept and prohibit the distribution of mail where there are reasonable and probable grounds to believe that mail is used for the purposes of committing an offence and to send such mail to a Board of Review for opening.
- (4) to open unmailable matter deposited in the mail. Unmailable matter in this context includes items which are illicit, prohibited, illegal or dangerous.

The Commission has concluded that it is necessary for the Postmaster General to continue to have power to open mail in each of these four categories. The interception and opening of all classes of mail which is undeliverable because of an insufficient or incorrect address is a power which must be available to any Post Office department. The Commission has no recommendation or comment to make in this regard.

Mail other than "post letters" should continue to be the subject of interception and opening to monitor compliance with the conditions set by the Post Office. The power to intercept and open mail which upon reasonable grounds it is believed is being used to commit an offence protects people who are vulnerable to improper solicitation, misrepresentation, fraud, and other illicit business practices conducted by mail. The Commission, however, is concerned with the procedures used in such interception. It must be assumed that the "reasonable grounds" upon which the Postmaster General acts will be founded on:

- (1) a complaint by the addressee;
- (2) a complaint by a member of the public who is not the addressee;
- or
- (3) other sources including Post Office personnel.

The Commission is of the view that the power to open mail which is suspected of being illicit should be confined to cases where a written complaint by an addressee is sent to the Postmaster General. In addition, the power should extend to all classes of mail. The Commission therefore recommends that:

MOP 8 The Post Office Act (or Bill C-42) be amended to provide that the "reasonable grounds" upon which the Postmaster General may intercept and open mail must be a written complaint by the addressee.

Although only mailable and deliverable matter should be sent by mail, the Commission is of the view that, in general, the Post Office should not have the authority to open mail to determine whether it contains mailable matter. There are, however, a few exceptions to this rule. If it is suspected from examination of the outside of a piece of mail that it contains unmailable material, the Post Office should return the item to the sender but it should not be opened. If, on the other hand, outside examination indicates that the contents pose a danger to life, or property, the item should be detained, opened and removed from postal custody to the extent necessary to determine and eliminate the danger. However, when this occurs a sworn statement of the detention, opening, removal or treatment including the circumstances which gave e Postmaster General within 48 hours of the incident. Any person purporting to act under these provisions who fails to report his action in this way should be subject to disciplinary or criminal prosecution, or both.

Where an outside examination suggests that an item of mail contains illegal or illicit material such as weapons, explosives, or drugs, the sender or

addressee should be notified and the contents seized for the purposes of prosecution or destruction, or both.

The Commission recommends that unmailable or undeliverable items (which can be so determined by outside inspection) be dealt with as follows:

MOP 9 (a) Non-mailable items which are neither dangerous, illegal or prohibited should be returned to the sender;

(b) if an item is undeliverable and the contents are dangerous to life or property, it should be removed from the Post Office premises and, if necessary, opened and destroyed;

(c) if an item is undeliverable because its contents are illegal, illicit or prohibited by law, the sender and/or the addressee should be notified of the interception within 60 days and the item should be retained by the Post Office for use in prosecution or for destruction or both.

The Commission further recommends that:

MOP 10 (a) An employee who removes, detains or opens an item or mail of any class because it represents a danger to life or property, should, within forty-eight (48) hours of taking such steps, submit a sworn statement to the Postmaster General on the circumstances surrounding the removal and detention; and

(b) any employee who, without a lawful excuse, fails to report an interception within 48 hours should be subject to discipline or criminal prosecution, or both.

Where no postage is paid, such mail is undeliverable and should be subject to destruction if the addressee will not, upon reasonable notice, pay the postage due and collect the mail at a designated postal terminal.

The Commission therefore recommends that:

MOP 11 Mail for which no postage has been paid should be subject to destruction if the addressee does not, within 60 days, attend at a Post Office terminal to pay the postage due and collect the mail.

The sender should also be notified of the liability for destruction and be given an opportunity to redeem the item upon payment of the postage due.

The power of Customs officers to open mail is limited to:

- (1) mail "other than letters" originating in another country; and
- (2) mail which is suspected of containing undeclared goods which are subject to customs or import duties or the importation of which is prohibited (for example, drugs, weapons, or explosives).

The Commission notes that international mail in transit through Canada to a third country is not protected in either the Post Office Act or Bill C-42. Since such mail should have freedom of transit, the Commission recommends that:

MOP 12 The Post Office Act (or Bill C-42) be amended to recognize the sanctity of international transit mail and exclude it from inspection by Customs officers.

The power of Customs officers to open mail can only be exercised in the presence of the addressee or a person authorized to act as his agent, or, at the option of the addressee, with his written permission.

When an addressee cannot be found or refuses to open a letter a Customs officer is required to submit the letter to the Post Office to be dealt with as undeliverable mail and, pursuant to regulation, destroyed after 30 days. Prohibited matter found by Customs officers is sent to the Post Office and dealt with in the same manner as prohibited matter found in domestic mail.

It has been argued that the Department of National Revenue (Customs and Excise) instead of the Post Office should have jurisdiction over all international mail. It has also been suggested that Customs officers, where there are reasonable grounds to suspect contravention of revenue laws, should have the power to examine all international mail of every category without the consent of the addressee. The intent of these suggestions is to add letters to the jurisdiction of Customs officers.

The Commission did not investigate the arguments used by Customs to support the need for additional power. It is the Commission's view, however, that unless there is convincing evidence that the criminal use of letters of the type that usually convey written correspondence is so widespread that its detection warrants setting aside all individual rights to privacy, this additional power should not be granted. It is interesting to note that these new powers being sought for Customs officers are not powers which Customs officers in the United States have or seek. Although there is no good reason why Canada should slavishly follow the United States' procedures, for example, in the area of the importation of drugs into North America, the two countries do face similar problems.

It has also been argued in this regard that since Customs officers have a right to inspect and open all items entering the country by other means, they should have the right to inspect and open all mail of any class with or without the permission of the addressee. This argument ignores the fact that Customs inspection of goods at a point of entry is performed in the presence of the owner or his agent and with his consent.

Without going into all the possible difficulties attendant upon the absence of a definition of 'letter' for the purpose of Customs inspection, it appears that the request that all international mail of every category be turned over to Customs for inspection is far in excess of what is needed for the protection of revenue and the enforcement of criminal law.

This desire by Customs for extended powers has been the subject of discussion for some time. In November 1979, the then Postmaster General of Canada wrote to the Minister of National Revenue and made the following points:

This separation of letters from all other items of mail accurately reflects the historical and current perception regarding the sanctity of private correspondence. In my opinion, any violation of this right should only be undertaken for overwhelming reasons of national security and equally important, when there are clear benefits to be obtained. From the evidence that I have seen to date, including the caucus committee report, I am not convinced that these two criteria are met in this case.

The Commission subscribes to that view. The right to privacy cannot be put aside without strong justification. In any event, there are alternatives available which respect privacy and at the same time are sufficient for the protection of revenues and adequate for the enforcement of criminal law. Customs officers now may open letters with the consent of the addressee and if that consent is not given the Act permits their destruction.

If there are reasons why an addressee ought not to be notified that there are reasonable and probable grounds to suspect that an item of international mail contains prohibited or illicit matter, Customs officers, as peace officers, will be able to apply for a judicial order to intercept in accordance with the recommendations made above.

The Commission, therefore, recommends that:

MOP 13 Customs officers be allowed to open mail, other than letters, for inspection and may open letters in the presence of the addressee or a person authorized by the addressee or with the written permission of the addressee. Where an addressee cannot be found or refuses to open a letter, it should be sent to the Post Office to be dealt with as undeliverable mail.

The concern expressed to the Commission with respect to a viable definition of 'a letter' continues to present a problem. It is clear, however, that no Customs personnel should be allowed to read or divulge any correspondence contained in sealed mail.

The Post Office Act should therefore define, for the purpose of Customs inspection, what is a letter. Since this is a technical matter the Commission

does not offer a definition here but suggests that the Post Office provide a definition based on weight and size. The Commission, therefore, recommends that:

MOP 14 For purpose of Customs inspection the term 'letter' be defined and the definition be included in the Post Office Act.