



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

Freedom and Security:
An analysis of the Policy Issues
Before the Commission of Inquiry

Prepared for the Commission by
Peter H. Russell
Director of Research

October 1978



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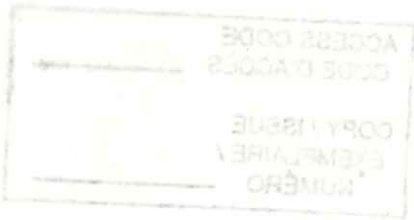
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INTRODUCTION

The Commission's Terms of Reference

1. The Commission's terms of reference as set out in points (a), (b) and (c) of the Order-in-Council of July 6, 1977 are attached to this paper as Appendix A. Essentially there are two parts to this mandate. First, the Commission is to inquire into and report on the extent to which members of the Force in the past have been involved in investigative or other practices which are unauthorized or not provided for by law. While the allegations which gave rise to the inquiry arose in connection with certain activities of the Security Service, this part of the inquiry is not confined to the Security Service. Indeed, in the course of its work, the Commission has had occasion to inquire into allegations that members of the Criminal Investigation Branch of the RCMP have carried out investigative activities not authorized or provided for by law.

2. The second aspect of the Commission's terms of reference is forward looking. It calls upon the Commission to examine the policies and procedures governing those activities of the RCMP concerned with protecting the security of Canada and to advise the Government of Canada on the policies, procedures and laws which are needed to govern these activities in the future.

The Commission's Progress to Date

3. Thus far the Commission's public hearings have focussed mainly on the first part of its mandate. It has inquired into a number of specific operations. These include operations in Quebec in 1971 and 1972 involving the removal of documents from the premises of the APLQ press agency, the removal from private premises of computer tapes containing membership lists of the Parti Québécois, the issuing of a fake communique urging FLQ extremists to continue on a course of revolutionary action, the attempt to recruit "human sources" to obtain information about possible terrorist activity, the burning of a barn and the taking of dynamite. The Commission has also inquired into a number of specific investigative practices. These include the opening of first-class mail, entry into private premises without a warrant, the use in various kinds of investigation of personal information given confidentially to the government for taxation, unemployment insurance or other purposes. In all of these practices the Commission has been concerned with the activities both of the Criminal Investigation Branch of the RCMP and the Security Service.

Future Work of Commission

4. The Commission still has some further evidence to receive in hearings concerning these past activities, particularly at the

level of senior officials and ministers. The Commission will report its findings on the facts and law concerning all of these past activities and advise the Governor in Council as to what actions in connection with this first part of its mandate would be in the public interest.

5. The Commission is at a stage where it can approach the second dimension of its mandate more directly. In the course of the inquiry into particular events and activities much has been learned about the policies and procedures governing the security activities of the RCMP. The widely reported evidence adduced at public hearings before the Commission and the volumes of transcript based on these hearings assist in providing a basis for formulating recommendations concerning changes in policies, procedures and laws. The Commission has scheduled a series of public meetings across Canada, from December 1978 to February 1979, to elicit the views of individuals and organizations on the policy issues before the Commission.

Purpose of the Issues Paper

6. The purpose of this issues paper is to facilitate public participation in these meetings by identifying some of the major policy issues before the Commission. Readers are invited to reflect on two questions as they study this document.

- *Is the Commission addressing itself to the right issues?*
- *What are the most effective means for dealing with these issues?*

7. The issues raised in the balance of this paper are intended to focus attention on the second part of the Commission's terms of reference. However, the Commission also solicits the submissions of individuals, groups and organizations as to the legal issues raised in the Commission's extensive hearings into the various factual allegations referred to in paragraph 3.

The Commission's Approach to the Issues

8. It is important to understand the difference between the terms of reference of the present Commission and those of the Royal Commission on Security, chaired by Mr. Maxwell Mackenzie which reported in 1968. That Commission was asked "to make a full and confidential inquiry into the operation of Canadian security methods". While there is undoubtedly a considerable overlap between the policy concerns of the two Commissions, the

present Commission's mandate refers more specifically to the "activities of the RCMP in the discharge of its responsibilities to protect the security of Canada".

9. The issues set out here, then, are centred on the Security Service of the RCMP:

- its basic purpose, mandate and powers
- its direction and control by government
- its internal structure and organization

Although the issues are organized into these three distinct divisions, in the final analysis these three elements of the problem must be brought together. The powers and mandate one is willing to grant to a security service will have much to do with how it is made responsible to democratic government and with how it is staffed and managed. By the same token the answers given to questions raised in the latter two sections of the paper will depend on the mandate and powers which one believes a security service ought to have.

10. Although most of the issues raised in this paper deal with the Security Service of the RCMP, there are some policy questions which concern the investigative procedures and powers of the Criminal Investigation Branch of the RCMP. These questions arise out of the inquiry into allegations of activities unauthorized by law or not provided for by law involving members of the RCMP.

11. This paper raises issues and poses questions. It does not provide answers or solutions. Questions, however, are not asked and issues are not selected in a vacuum. The Commission's approach to these issues will reflect its concern for the fundamental ideals which are at stake in this Inquiry. From this perspective it can be said that the Commission's primary task is to contribute to the establishment of better means of maintaining political freedom and security in Canada. These two values are not, fundamentally, in competition with one another. After all, what is it in Canada that must above all be secure? Surely it is the process of democratic and constitutional government wherein social and political change is accomplished through free discussion, communal differences are resolved through negotiation and compromise and the coercive powers of government are subject to the rule of law. It is, above all, this process which must be secured by a security service. A security service must be able to do its job, but do it in a way that does not undermine the very democratic process it is trying to protect.

I

PURPOSE, MANDATE AND POWERS OF THE SECURITY SERVICE

A. PURPOSE AND MANDATE

Needs of the Security of Canada

12. The order-in-council of July 6, 1977, instructs the Commission to have "regard to the needs of the security of Canada" in rendering its advice on the policies and procedures to govern the RCMP Security Service. Some fundamental questions must be asked about these security needs:

- *What is it in Canada that must be protected by a security service?*
- *What are the threats to the security of Canada which a security service responsible to the Government of Canada should guard against?*
- *Most fundamentally, there is the question of whether these needs warrant maintaining a security and intelligence agency in addition to our regular police forces, the armed forces and other government departments which provide intelligence and security services.*

13. Three kinds of threats are usually listed: espionage, subversion and terrorism. These provide the raison d'être of the large security and intelligence agencies which have emerged in all the Western democracies since World War II. In considering the powers which a national security service should have, careful thought must be given to the magnitude of these threats in the future.

- *In the international realm, is détente with the Soviet Union likely to affect the extent and character of espionage?*
- *What precautions might Canada need to take against the efforts of foreign powers to influence Canada's policies in a clandestine way?*
- *How will Canada's participation in alliances influence its security responsibilities and its intelligence needs?*
- *Is there a need for more effective securing of our international trade interests through security and intelligence methods?*
- *What kinds of domestic "subversion" do we need to guard against in the future?*
- *How likely is a recurrence of the kind of violence which led up to the crisis of 1970?*

-- *What precautions are needed to protect Canada from acts of terrorism in an era when dreadful means of destruction may be at the disposal of very small groups of people?*

14. The magnitude of these threats to the security of Canada is only one dimension of the future which must be contemplated. It is equally important to consider the degree of risk which Canadian society is willing to tolerate. Clearly some degree of risk must be accepted. The attempt to eliminate completely the dangers of espionage or political violence would quickly lead to a police state. But governments are also taken to task for being too lax in protecting vital secrets from espionage or being ill-prepared to protect citizens from acts of terrorism.

15. This matter of the degree of risk bears closely upon the "intelligence" functions of the RCMP. Both its Criminal Investigation Branch and Security Service are concerned with preventing crime as well as detecting crime. Intelligence gathering relates closely to crime prevention. Its aim is not to gather evidence relating to a crime that has occurred or is very likely to occur, but to collect and analyze information well in advance which will be useful in the prevention of crime. Intelligence gathering by the Security Service is much more readily equated with the regular criminal intelligence functions of police in the areas of espionage and terrorism than it is in the area of subversion. The latter brings the political speech and political activity of individual citizens and groups of citizens under Security Service surveillance. Intelligence gathering by the Security Service in this area may significantly undermine the right to dissent and to agitate peacefully for social and political change -- rights that are fundamental to a liberal democracy. Later we discuss the issue of how and by whom this intelligence gathering activity should be carried out and directed, if it is to be carried out at all.

-- *But here a fundamental question must be raised as to whether Security Service investigations should be confined to activity which it is reasonable to believe is criminal in intent, or whether there are conditions under which gathering of political intelligence by the Security Service should be permitted at an earlier stage.*

Mandate of the Security Service

16. Today the RCMP Security Service provides a number of services for the people and government of Canada. These services include the following:

- gathering intelligence about threats to national security
- preventing and countering espionage, subversion and terrorism
- protecting government secrecy
- carrying out security clearance checks for the public service and in relation to applications for immigration visas and citizenship certificates

In addition the RCMP advises government departments, agencies and other police forces on security matters and provides security services in connection with the protection of persons and buildings.

17. These functions have accumulated over time. They have not been assigned to the Security Service of the RCMP by Parliament or by Order-in-Council. Indeed, the very existence of the Security Service as a distinct branch of the RCMP is not explicitly provided for by statute. In this sense, Canada follows British practice much more closely than American. Legal authority for the Security Service is based on a regulation passed under the RCMP Act which states that "in addition to the duties prescribed by the Act, it is the duty of the Force...(e) to maintain and operate such security and intelligence services as may be required by the Minister".

-- *Is it time that Canada adopted a more formal, legislative authorization for its national Security Service?*

18. The most sweeping and comprehensive terms in which legislative authorization could be effected would be the enactment of a National Security Act setting out all the functions and powers of a national security service.

-- *Even if it is felt that such a comprehensive legislative authorization is unnecessary or undesirable, would there be merit in providing a more precise legal definition of what constitutes national security and particularly of what constitutes subversive activity?*

19. Discussion of the previous question can be made more concrete by considering two recent developments which go some way towards providing a clearer authorization of the Security Service's mandate. The first of these is the 1974 Act of Parliament adding to the Official Secrets Act a new section 16, which, among other things, empowers the Solicitor General (rather than the Courts) to authorize electronic surveillance of "subversive activity directed against Canada or detrimental to the security of Canada", or for the purpose of gathering "foreign intelligence information essential to the security of Canada". The Act lists

the kinds of activity which are embraced by the phrase "subversive activity". The second development occurred in March 1975 when the Cabinet issued a directive on the mandate of the Security Service authorizing it to monitor and counter the activities of certain individuals and groups in Canada. The directive lists the kinds of individuals or groups who are proper targets of RCMP Security Service surveillance. The operational parts of this directive were disclosed to the House of Commons by the then Solicitor-General Mr. Francis Fox in October 1977. It was given in evidence to this Commission of Inquiry on July 25, 1978. Section 16 of the Official Secrets Act and the Cabinet Directive of March 1975 are appended here as Appendices B and C.

20. These recent measures raise questions of both substance and form.

-- *Do they contain acceptable and compatible definitions of threats to national security and subversion?*

-- *Is the 1975 directive the kind of mandate that should be embodied in an Act of Parliament or in regulations passed under an Act of Parliament?*

21. If Parliament or the government provides the Security Service with a clear positive mandate, consideration should also be given to attaching some negative boundaries to that mandate.

-- *Should certain categories of groups or individuals or types of activity be excluded from Security Service surveillance?*

-- *In particular, should members of federal or provincial legislatures or candidates for elected office be immune from Security Service surveillance?*

-- *Is there a need to give clear direction to the Security Service that it is not to break the law or interfere with the legitimate right to dissent?*

-- *What form should such directives take? Should they be statutory or administrative?*

22. It is important to consider the major implications of attempting a more precise legislative definition of the Security Service's mandate.

-- *Is there a danger of introducing too much rigidity into the work of the Security Service?*

-- *Is this the right time for public debate and parliamentary determination of such matters?*

-- *How would statutory limitations on surveillance by the Security Service be enforced?*

These questions must be considered as well as the implications of continuing without any explicit statutory authorization of the Security Service.

23. There are other questions which should not be overlooked in considering the mandate of the RCMP Security Service. Should the range of services performed by the Security Service be altered? The answer to this question depends in part on the proper distribution of responsibilities for security and intelligence within the federal government. The Department of National Defence carries out security investigations for its own personnel. The Department of External Affairs has an important role in providing the Government of Canada with international intelligence and in meeting the security needs of its posts and missions abroad. Ministers, deputy ministers and agency heads are entirely responsible for the security of their departments and agencies.

- *Do we have an appropriate distribution of responsibilities for security and intelligence amongst the departments and agencies of government?*
- *Should the responsibilities of the RCMP's Security Service be altered?*

24. Consideration must be given to expanding as well as to reducing the Security Service's functions. For example, it has been stated on numerous occasions that Canada (unlike Australia, France, Great Britain or the USA, for example) does not have an offensive foreign intelligence capacity. Some Canadians take considerable pride in this as a mark of this country's international innocence.

- *Can Canada afford to be without a secret foreign intelligence service of its own in an era of international terrorism and stiff economic competition even amongst diplomatic and military allies?*

25. To take an example in the opposite direction -- where consideration might be given to reducing the Security Service's mandate -- consideration should be given to its role in carrying out security clearance investigations. This role, it should be noted, accounts for a large portion of the Security Service's resources.

- *Should the Security Service of the RCMP continue to carry out the field investigations for all those employed in the federal public service (exclusive of the armed forces) who require security clearance?*
- *Should the Security Service collect and assess information as to character weaknesses as well as information concerning possible disloyalty?*
- *Should the Security Service do more than collect relevant information? Should its members also make recommendations about the suitability of individuals?*

B. POWERS, METHODS AND REMEDIES

Electronic Surveillance

26. In the course of the inquiry a number of questions have arisen about the law governing police powers. Although these questions have been derived from concerns about activities of the RCMP, most of them relate to police powers generally in the Canadian legal system. Foremost amongst these are questions dealing with the interception of private communications -- questions which call for a reconsideration of issues which were widely discussed in the course of enacting the Privacy Act amendments to the Criminal Code in 1973. One question which did not receive much attention in 1973 concerns "bugging" or the acquisition of information by hidden recording devices in private premises:

- *Should the power to enter private premises surreptitiously to install listening devices be explicitly provided for?*
- *Or should such a power be clearly denied and, as a consequence, "bugging" be prohibited as a method of police surveillance?*

27. Besides this specific question about surreptitious entry, there is the more basic question of the extent to which electronic surveillance and other covert means of intelligence gathering should be used by the Security Service. Since 1974, the number of Solicitor General's warrants authorizing electronic surveillance has averaged well over 400 per year. It is important to consider whether or not there is an over-reliance on covert as opposed to overt means of intelligence gathering. Legislation regulating the use of such devices places great reliance on mechanisms of "external control". In section II the issue of which method of external control is to be preferred -- a judge? the Solicitor General? or some alternative body? -- will be explored. But it should be noted that both in Canada and in the United States, these external controllers turn down less than 1% of the requests made to them for permission to wiretap or bug. So it is worth asking:

- *In addition to external controls, what kinds of internal restraint and control need to be developed for the use of electronic surveillance and other covert methods of intelligence gathering by the Security Service?*

Mail Opening

28. The Commission's inquiry into allegations that members of the RCMP -- from both the Criminal Investigation Branch and

the Security Service -- have violated the prohibition against the interception of first-class mail, has prompted the introduction of legislation designed to give the police power to intercept and open first-class mail. This legislation, as submitted to Parliament, would, if passed, become inoperative one year after the submission of this Commission's report. Clearly the Commission has a responsibility to bring forward recommendations on this subject. In developing such recommendations it must give careful consideration to whether, on the basis of the evidence submitted to it, there is a real need for this additional police power. If it considers that such power is necessary, it must further decide how such power is best controlled.

- *Should mail interceptions be allowed for purposes of national security?*
- *If so, should mail interceptions be treated on the same basis as electronic surveillance, with national security intercepts authorized by a Minister, while intercepts for criminal investigation purposes are authorized by the courts?*

Use of Personal Information

29. Another series of questions has arisen concerning RCMP access to personal information given confidentially to government departments or agencies for purposes such as taxation, or unemployment insurance. The Commission will be reporting its views on whether use of such information by the RCMP for purposes unconnected with taxation or social insurance was authorized by law. But it also invites submissions on whether statutes and regulations should be changed so that they either explicitly authorize or clearly forbid such uses.

- *Under what conditions, if any, should personal information given to or obtained by a department or agency of government for purposes unrelated to criminal investigation, be made available to the police or Security Service for criminal investigation or national security purposes?*

Use of Human Sources

30. Certain cases of the attempted recruitment of "human sources" or informers as a method of intelligence gathering by the RCMP Security Service have come under close scrutiny in the course of the Commission's inquiry. The Commission will be reporting its findings on whether there were activities of RCMP members unauthorized or not provided for by law in these cases.

31. But beyond the question of the lawfulness of activities involved in these particular cases there are important policy questions concerning the use of such methods by the Security Service. Heavy reliance on "informers" is characteristic of the work of virtually all security and intelligence agencies. But this essential component of intelligence gathering may be abused. The "recruitment" of informers may entail intimidation or blackmail by police officers. Informers may find themselves stimulating the occurrences about which they are informing and in fact acting as agents provocateurs. Excessive use of informers within private political and social organizations could create an environment of suspicion and distrust incompatible with a democratic society.

- *In Canada, is the use of informers by our national security service under effective control?*
- *Are stricter guidelines needed to govern the recruitment and handling of sources by the RCMP Security Service?*
- *Should Canadian criminal law clearly provide a defence of "entrapment" for persons accused of criminal acts which may, primarily, result from incitement by police informers?*

Countering

32. The Commission has heard evidence concerning the RCMP Security Service's use of various techniques to counter the threat of subversive activity in Quebec in the early 1970s. The Commission will be reporting its findings of fact and law as to the implications of RCMP involvement in each of these situations -- the forceful entry of private premises and removal of private property, the burning of a building and the issuing of a fake communique.

33. But again, for the future, careful consideration must be given to the central policy issue which arises from these individual cases.

- *To what extent, if at all, should the members of the federal Security Service be permitted to use coercion or deceit against Canadian citizens or persons resident in Canada or anyone who on reasonable grounds could not be suspected of a crime?*

It should be noted that the Cabinet directive to the Security Service of March 1975 (see 19 above) authorizes the Security Service to "deter, prevent and counter" as well as "discern and monitor" the activities of certain groups in Canada.

- *What Security Service activities are to be embraced by these verbs?*
- *Do these activities correspond to powers conferred on police officers by Canadian law?*
- *If they don't, then is there a case for granting members of the RCMP Security Service some extraordinary powers?*
- *If such a case can be established, then how should such extraordinary powers be defined and controlled?*

Surveillance

34. Monitoring or investigating possible threats to national security may involve the use of overt or covert means of intelligence gathering. A number of questions have already been raised about covert methods of intelligence-gathering. But other questions arise, especially with regard to domestic subversion surveillance, concerning the initiation of surveillance of any kind and the disposition of intelligence reports.

- *Should there be any guidelines governing the circumstances in which the Security Service may commence surveillance by any means of persons or groups who are suspected of subversive activity?*
- *Where surveillance of a person or group indicates no activity endangering national security, should the Security Service be permitted to open and maintain files on such persons or groups?*
- *If a file is opened in such circumstances, what rules, if any, should govern the use of information contained in such files?*

Official Secrets Act

35. Further questions relating to the legal framework within which the Security Service operates arise as matters of unfinished business in the sense that the issues have been known to government and the public for years but they have not yet received legislative attention. One such matter is the Official Secrets Act. In 1946 the Taschereau-Kellock Royal Commission on Espionage identified certain deficiencies in the Act in terms of the powers needed for effectively countering Soviet espionage. Ten years ago, the Royal Commission on Security found that the Act was "too broad and too rigorous". Rather than recommending some minor amendments, the Commission called for a complete revision of the Act. Since then in the United Kingdom there has been a critical review of that country's legislation, on which the Canadian Act is modelled, and a White Paper proposing extensive revisions has been issued by the British Government. While no steps have been taken yet in Canada to revise the Official Secrets Act, public interest in revision has been stimulated by recent prosecutions under the Act.

36. The Official Secrets Act by establishing the range of government secrecy which is to be protected by criminal sanctions has an important bearing on the work of the RCMP Security Service. The Commission is interested in receiving submissions on whether and how the Official Secrets Act should be reformed. Most criticisms of the Act here and in Great Britain have been concerned with narrowing the range of government information the unauthorized disclosure of which should be discouraged by special criminal sanctions.

- *Is an Official Secrets Act needed at all?*
- *If it is, should its scope be narrowed to the protection of serious state secrets?*
- *How should the balance be struck between the ideal of open trials and the need to protect state secrets (including sources of secret information) in prosecuting persons for violations of the present or a revised Official Secrets Act?*

37. There may, on the other hand, be a need to expand the scope of the criminal law to cover clandestine activities of foreign agents in Canada. Interpretation of the Official Secrets Act has meant that disclosure to clandestine foreign agents of information which is neither official nor secret is not prohibited by the Act. Many of the major powers -- communist and western -- employ secret agents not to spy on other countries or steal their secrets, but to influence their domestic political life and policies.

- *Should Canada extend the scope of its criminal law to cover such clandestine political activities of foreign agents?*

Freedom of Information

38. The Official Secrets Act is closely related to the contemporary debate concerning the citizen's access to government information. While the Freedom of Information issue as such does not form part of the Commission's mandate, still there is a very important aspect of that issue which does bear directly on the Security Service.

- *To what extent should information in the hands of the Security Service be given an immunity from the various measures designed to give citizens access to government information?*

For instance, Security Service files, among other kinds of information, are exempt from the right of access to personal information established under Part IV of the Human Rights Act.

In 1969, the Prime Minister announced in the House of Commons that Agencies and Departments of Government would be asked to transfer records more than 30 years old to the Public Archives to be made available to the public under the normal rules of access. Again, a number of exemptions from this policy were established. Under these exemptions no RCMP Security Service material dated after 1925 has been transferred to the Archives. Another example: information pertaining to national security is one of the main classes of information which under Section 41(2) of the Federal Court Act can be withheld, on the basis of a Minister's affidavit, from certain court proceedings. A similar type of exemption is contained in various proposals for a Freedom of Information Act.

39. Each of these matters must be examined on its merits.

- *In each area how should the balance be struck between the need to protect the Security Service's sources of information if it is to have a significant intelligence-gathering capacity, and the need for fairness and accuracy in the information about individuals which is used by the state?*

The issues in this area cannot be considered apart from questions of governance raised in the next section of this paper. Agreement on the general need to exempt national security information from freedom of information measures may leave considerable room for debate as to who should make the decision about what should be included under national security exemptions.

Emergency Powers

40. Another piece of unfinished business concerns emergency powers. During and after the 1970 October crisis, the federal government and many other persons agreed on the desirability of a new legal instrument which would provide powers necessary to deal with sudden and serious threats to social order and yet avoid the comprehensiveness of the War Measures Act. The War Measures Act does not stipulate the range of powers which the government can by regulation confer upon the police or the military to deal with a "real or apprehended war, invasion or insurrection". It also provides that the rights and freedoms in the Canadian Bill of Rights do not apply to actions taken under the War Measures Act.

- *Does Canada need legislation which will give government and police the powers needed to take effective action against sudden outbreaks of "terrorist" activity and yet provide reasonable assurance that fundamental civil liberties will not be unnecessarily abridged?*
- *If there is a need for such legislation, what form should it take and under what circumstances should it come into play?*

Remedies

41. The significance of attempts to define the powers and mandate of the Security Service by law and government policy depends, in part, on the remedies open to Canadian citizens when they believe that such powers have been abused or exceeded. It has been suggested that periodic Commissions of Inquiry, such as the present one, are necessary to counteract any tendency of the Security Service to overstep the bounds of its authorized powers. Unless such a Commission were of a continuing nature, the ordinary person may need more effective means of being informed of unlawful activity and of obtaining redress.

- *Are any special processes required for a person who believes that he has been adversely affected by an unlawful activity by the Security Service?*
- *What procedures would it be reasonable to expect should be followed to investigate unlawful acts of the Security Service which are not the subject of public complaints?*

42. Another Royal Commission, the "Marin Commission" on Public Complaints, Internal Discipline and Grievance Procedure Within the RCMP in 1976 recommended that so far as possible members of the Force accused of criminal behaviour should be treated in the same way as members of the public in criminal prosecutions. Among other things this would mean that prosecution would be entered in all cases where there is prima facie evidence sufficient to establish criminal misconduct, that disciplinary action would not be used as a substitute for criminal prosecution and that Force members in carrying out such criminal investigation should be seconded to a provincial attorney general to maximize their independence. Recent proposals to amend the RCMP Act provide a fairer process of internal discipline for RCMP members than existed previously but do not deal directly with public complaints alleging criminal activity. RCMP administrative practice has been changed in the direction advocated by the Marin Report. But it should be noted that under Canada's federal system effective implementation of this part of the Marin Report will require action by both the federal and provincial levels of government.

- *What measures should be taken to ensure that members of the RCMP are not exempted from prosecution when they break the law?*

43. Complaints not alleging criminal behaviour may be more effectively dealt with by an Ombudsman. The Marin Commission in 1976 recommended the establishment of a Federal Police Ombudsman for this purpose. Legislation now before Parliament, if enacted, will establish an Ombudsman for Canada whose jurisdiction will extend to the RCMP and, presumably, to its Security Service.

However, there has as yet been little consideration of whether such a general all-purpose Ombudsman is to be preferred to a more specialized Ombudsman for purposes of dealing with complaints against the RCMP. Some further questions arise:

- *Should the Ombudsman be a last resort to be called upon only after the procedures within the RCMP for dealing with complaints have been exhaustively pursued?*
- *Is it feasible for Ombudsman mechanisms to apply to secret activities of the Security Service?*

Here attention should be given to the ways in which the powers of the Ombudsman under the current legislative proposals would be restricted in matters relating to national security.

44. Where unlawful activities by police officers yield evidence which is subsequently produced in court as evidence to support a criminal charge, another possible sanction against such unlawful conduct would be refusal by the Court to accept such evidence. However, in Canada the judiciary has restricted its own discretion to exclude such evidence. There has been a great deal of discussion as to whether Canada should move more in the direction of the United States and adopt stricter rules to exclude illegally obtained evidence however clearly it may support the prosecution's case. The current constitutional proposals of the federal government would entrench the right to be secure against unreasonable searches and seizures in the Constitution of Canada. A similar constitutional guarantee in the United States has provided the principal foundation for the American Courts' enforcement of a strict rule excluding illegally obtained evidence.

- *Would Canada benefit from such an addition to its constitutional or statute law?*
- *How effective has such a rule been in the U.S. as a means of deterring illegal police methods? What has its impact been on effective law enforcement?*
- *Would it be best to have an absolute rule excluding illegally obtained evidence or have judges exercise more discretion?*
- *How effective have more discretionary powers of exclusion been in Scotland and England?*

II

GOVERNANCE OF THE SECURITY SERVICE

45. Government direction and control of a security service create dilemmas for democracies. Responsible and democratic government means a government whose activities are directed by Ministers and officials responsible to elected representatives and whose policies are open to informed public discussion. The activities of a security service, typically, are directed against those who use stealth, deception or criminal means to accomplish their ends. Consequently, to be successful these activities must be carried out with a great deal of secrecy. A security service that is truly an "open book" is a contradiction in terms. But a security service accountable only to itself is incompatible with democracy. Clearly the best arrangements for supervising the work of the security service must be found somewhere between these extremes.

46. There is another principle at stake in the proper governance of the Security Service. In a democracy it is essential that constitutional competition between contending parties be free from police or other coercive interference by anyone, including the government of the day. Hence it is extremely important that the Security Service is never used as an instrument for pursuing the partisan advantage (or disadvantage) of the party in power or for attacking (or promoting) its constitutional rivals. In assessing the means of ensuring adequate government direction of the Security Service, the need to guard against this danger must always be kept in mind.

Executive Control and Responsibility

47. Responsibility for shaping security policy and supervising its execution must rest, mainly, with the executive branch of government. Within the executive branch it is essential to distinguish decisions which should be made by responsible Ministers from decisions which should be left to the officers and members of the Security Service. The simple distinction, so easy to make verbally between "general policy guidelines" (to be established at the Ministerial level) and "day to day operations" (to be left to the Security Service), will not likely serve as an adequate basis on which to respond to the important questions which arise in this area.

- *How thoroughly should security operations be controlled by Government guidelines or policies?*
- *Are the guidelines issued in March 1975 an acceptable set of guidelines?*

- *Are there some detailed operational decisions -- involving grave threats to national security or sensitive political judgment or questionable methods -- which ought not to be made without approval by a responsible Minister, and perhaps by the Prime Minister?*
- *If there are, should this responsibility be acknowledged publicly?*
- *What reporting or monitoring arrangements are necessary to ensure that "day-to-day operations" are lawful and consistent with policy guidelines?*
- *How can ministerial responsibility for the Security Service be conducted so as to minimize the danger of the security service being used for partisan political purposes?*

The Solicitor General

48. The primary focus of these questions must be the office of the Solicitor General. The Director of the Security Service of the RCMP reports to the Commissioner of the RCMP. Under the RCMP Act the Commissioner of the RCMP has "control and management" of the RCMP "under the direction of the Minister". Since 1966 the Minister responsible for the RCMP has been the Solicitor General. Previously it had been the Minister of Justice. One of the principal reasons given by Prime Minister Pearson in 1966 for this change was the need to have a ministry which could "examine in detail the problems of espionage and subversive activities and to determine how best to deal with them".

49. The Royal Commission on Security, which was established in the same year in which the Solicitor General assumed responsibility for the RCMP, had little to say about the way in which the Minister should discharge his responsibility for the supervision of what was then the Directorate of Security and Intelligence in the RCMP. On the contrary, the Commission recommended that the Security Service be separated from the RCMP under a Head who would have the same degree of independence as that enjoyed by the Governor of the Bank of Canada. At the same time the Head would be responsible for day-to-day operations to a Minister (not necessarily the Solicitor General) and have direct access on certain unspecified matters to the Prime Minister -- a relationship which seemed somewhat at odds with the first recommendation. The Commission further recommended the establishment of a Security Secretariat in the Privy Council Office with adequate resources and status to formulate security policy and to supervise its implementation.

50. None of these recommendations was adopted. A large professional Security Secretariat was not established within the Privy Council Office. On the contrary, the resources and formal responsibilities of the Solicitor General's Department in security and intelligence matters were increased. In 1971, the Security Policy and Planning Group was established in the Solicitor General's Department. Its purpose was to advise the Minister on security and intelligence matters and, in particular, to assist him in the analysis of intelligence reports received from the RCMP Security Service. This group was subsequently given responsibilities in the area of policing and is now known as the Police and Security Planning and Analysis Group. In 1974 when the Privacy Act Amendments to the Official Secrets Act came into effect, the Solicitor General became responsible for approving Security Service requests to carry out electronic surveillance for national security purposes. Since then this Minister has been called upon to authorize over 400 individual warrants each year.

51. These developments coupled with the serious allegations which gave rise to this Commission of Inquiry make it incumbent upon this Commission to give careful consideration to the role of the Department of the Solicitor General in relation to the Security Service of the RCMP. Amongst the questions which arise are the following:

- *Is the Solicitor General's Department the appropriate Department to be responsible for the "direction" of the Security Service?*
- *Does the Prime Minister appoint to this portfolio Ministers of the calibre required for the proper discharge of this responsibility?*
- *What resources does such a Department need for this task? Does the Solicitor General's Department have the necessary resources?*
- *What kind of "direction" should be given by the Minister? How detailed should it be? How much independence should the Security Service have?*
- *On what matters should the Security Service be required to obtain Ministerial approval before the event? What matters should be reported to the Minister after the event?*
- *What matters relating to Security Service operations should be referred to the Prime Minister? On what matters should the Director of the Security Service have direct access to the Prime Minister?*

Cabinet and Interdepartmental Committees

52. Although the Government did not establish the Security Secretariat in the Privy Council Office as recommended by the Mackenzie Commission, it did take steps to reorganize and strengthen the committee system which assists the Cabinet in making security policy and coordinating government activity in the field of security and intelligence. A Cabinet Committee on Security and Intelligence is supported by an interdepartmental committee structure manned by the key officials from the security and intelligence community. There is a small secretariat in the Privy Council Office to provide support services to this committee structure.

This committee system in conjunction with the Solicitor General is the formal structure through which the federal government can direct and respond to the work of the Security Service. The Security Service as an intelligence gathering service produces intelligence for the use of government. Therefore it is important that government, the main consumer of the intelligence product, have adequate means to indicate its needs and priorities to the Security Service and to assess the value of the intelligence it receives. It is also essential that where important intelligence concerning security threats is provided by the Security Service, government can use and respond to this intelligence in the most effective way possible. Because the composition and terms of reference of these committees are classified information it is not possible to conduct a public dialogue on the adequacy of the existing structure. However, certain conceptual questions can be raised with respect to it.

- *To what extent is it possible or desirable to initiate policy considerations in a committee system which has no operational responsibilities?*
- *Is it possible to deal effectively with policy in a committee system without developing a large associated staff?*
- *If such a staff developed, to what extent would it replace or duplicate functions being performed in the Security Service?*
- *If policy were developed in the committee system, who would be the responsible minister -- the Solicitor General or the Prime Minister?*

53. These questions also call for a reconsideration of the Security Service's relationships with other government departments and the interdepartmental committee structure.

- *How should Security Service intelligence be disseminated to government departments?*

When the Security Service conducts a security clearance investigation for a department, its report goes directly to the Department concerned.

- *But what about reports which are not in response to requests for security clearance but rather in connection with other functions such as the surveillance of groups?*
- *Should there be some stipulation of the conditions under which Security Service reports on groups or individuals should be disseminated to government departments and agencies?*

54. It is extremely important for Canada that intelligence reports received from the Security Service be properly assessed. Grave errors can occur if government either overestimates or underestimates threats to Canadian security. Hence it will be important for the Commission to investigate the adequacy of the resources and procedures of the Canadian government for providing a balanced and responsible assessment of Security Service intelligence.

The Role of Parliament

55. Up until now, Parliament has played a very limited role in relation to the work of the Security Service. As noted above, no legislation has been enacted concerning the Security Service. From time to time in the House of Commons questions concerning security issues are directed to the Solicitor General and the Prime Minister. These usually deal with the handling of particular situations. There have been very few debates on the security and intelligence needs of government or the mandate and powers of the Security Service. There is no separate parliamentary approval of funds designated for the Security Service. When the abridged version of the report of the Royal Commission on Security was tabled in the House of Commons in 1969, the Prime Minister and party leaders each gave a speech, but there was no subsequent debate on the Report's recommendations. In the last few years, the House of Commons' Standing Committee on Justice and Legal Affairs has held in camera briefing sessions with the Commissioner of the RCMP and the Director General of the Security Service. Since 1974, the Solicitor General has been required to report annually to Parliament on the issuance of warrants for national security electronic surveillance. These reports are essentially one page statistical reports giving the total number of installations and their duration. A similar method of reporting to Parliament is now proposed by the government for mail openings by the Security Service.

56. Both within and outside Parliament views have been expressed to the effect that Parliament should play a larger role in this area of government. A system of responsible govern-

ment requires not only that the major agencies of government be under the direction of responsible ministers, but also that there is adequate opportunity for making the responsible minister accountable to the representative legislature. Further, the Security Service to be effective in protecting Canadians against threats to national security benefits from a realistic public understanding of its tasks and its capacities.

- *Could public understanding of the Security Service's role be strengthened by improving Parliament's capacity for reviewing the activities of the Security Service?*

57. It is important to assess the existing procedures for Parliamentary review of the Security Service and consider possible alternatives.

- *Is the Justice and Legal Affairs Committee the best forum for the activity?*
- *Would it be better to have a smaller committee, with more continuity in its membership?*
- *Should there be informal ways of briefing opposition leaders on important security issues?*
- *In Great Britain Privy Councillors including politicians on the opposition side of the House who have had experience in security matters play a considerable role in reviewing security issues and policies. Should more of this be done in Canada? Could it be done?*

58. These questions call for careful judgment. Consideration must be given to the extent to which information about security operations can be publicly disclosed without destroying the effectiveness of these operations. This point leads to consideration about the degree of secrecy which must attach to procedures through which Members of Parliament are informed about security operations.

- *What kind of security precautions are consonant with the rights and privileges of Members of Parliament?*
- *Is there a point at which the opposition leader's or MP's opportunity to comment publicly on government activities may be unacceptably reduced by access to secret information?*

The Judiciary's Role

59. In Canada, judicial review of executive decisions or activities relating to national security has been quite narrow.

Under the doctrine of state privilege, Canadian judges have tended to accept a Minister's statement as conclusive that evidence must be withheld from court proceedings on national security grounds. Section 41(2) of the Federal Court Act enacted in 1971, codified this result. Ordinarily a judge may examine a document which a minister has certified should be withheld from court proceedings on grounds of public interest and decide whether public interest in the administration of justice outweighs the public interest specified as grounds for withholding the document. But under Section 41(2) of the Federal Court Act the judge cannot examine a document when a Minister certifies that its release to the parties "would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council of Canada".

60. Four years ago, when the Privacy Act legislation was introduced to regulate electronic surveillance, interceptions involving national security were treated quite differently from those involving the investigation of ordinary criminal offences. For the former, the reasonableness of requests for warrants to conduct electronic surveillance would be decided by a cabinet minister -- the Solicitor General, whereas for the latter, judges would decide whether or not to give the authorization. A similar differentiation of national security cases from criminal cases is now proposed by the government for mail-openings. The wisdom of this differentiation must be re-examined.

- *Should the judiciary be excluded from the process of deciding if it is necessary for the state to intercept private communications for national security purposes for counter-subversion as well as counter-espionage purposes?*
- *Or should judges be involved in this quasi-administrative process at all?*
- *If judges are to be involved in national security matters, which judges should have this responsibility?*
- *Is there a need for some specialized judicial body in this field?*

61. Aside from those areas where there are specific limitations on the judiciary's powers in relation to the Security Service or national security, the judiciary's general powers of review over the Security Service are apt to be considerably less than over the activities of the Criminal Investigation Branch of the RCMP. A much higher proportion of the Security Service's work is not directed towards a prosecution through the courts. As a consequence, relatively less of the Security Service's work is reviewed by the judiciary. However, if the powers and mandate of the Security Service are more narrowly

circumscribed by law than now is the case, the role of the judiciary in controlling the Security Service might increase.

- *What would the court's role be expected to be in enforcing legal limitations on the powers and methods of the Security Service?*

This question, of course, relates back to the questions raised earlier in this paper about the need for new legal remedies.

Other Review Mechanisms:

Decisions Affecting Individual Rights

62. Other kinds of review mechanisms may be considered especially where the rights and interests of individuals may be adversely affected by information or recommendations from the Security Service. The Royal Commission on Security recommended the establishment of a Security Review Board to review contested security clearance decisions concerning civil servants and applicants for immigration visas and citizenship certificates. The Board would also receive annual or semi-annual reports from the Head of the Security Service and draw the attention of the Prime Minister to any matters it considered appropriate.

63. Although this recommendation in its entirety has not been implemented, the new Immigration Act in 1976 introduced a Special Advisory Board to review ministerial decisions involving the deportation of permanent residents based on security or criminal intelligence reports. This 3-person Board is appointed by the Cabinet and must include at least one retired judge amongst its members.

64. Similar kinds of review mechanisms have been proposed in relation to freedom of information and government decisions to exempt material on national security grounds. With all of these mechanisms it is essential to give careful consideration to their powers, procedure and personnel.

- *Should the decisions of such boards of review on whether a person (or publication of a document) constitutes a threat to national security take precedence over assessments by the Security Service?*
- *To whom should the reports of such bodies be addressed? To the Deputy Minister? Minister? Prime Minister? Cabinet, or to Parliament?*
- *In the procedures of such bodies, how can the need to safeguard sources of information be best reconciled with the ideal of informing a person of the state's reasons for adversely affecting his rights and giving him a fair chance to challenge those reasons?*

- *Should there be judges or ex-judges on such boards?*
- *Should leaders of opposition parties be involved in appointments to such boards?*

Review of Operational Decisions

65. Other countries provide examples of control procedures which pertain more directly to operational decisions of the Security Service. In New Zealand since 1977 there has been a formal statutory requirement that an Intelligence Council made up of senior government officials be informed by the Security Service of any new area of potential espionage, sabotage, terrorism or subversion in respect of which the Director of the Service considers it necessary to institute surveillance. In the United States, under guidelines established in 1976 by the Attorney-General procedures were introduced to ensure that representatives of the Justice Department constantly review decisions of the FBI to conduct domestic security investigations involving such techniques as the recruitment or placement of informants in groups.

66. In November 1977, the Commissioner of the RCMP informed the House of Commons Committee on Justice and Legal Affairs of measures taken to strengthen the RCMP's internal audit of the Security Service. These measures include the establishment of a Security Service Operational Priorities Review Committee to review and assess ongoing and freshly initiated projects. One member of this Committee, who is the only non-RCMP member, is a lawyer seconded from the Department of Justice. It should be noted this is essentially a means of "internal audit".

- *Is there a need for continuing operational review which involves more systematically than may now be the case, non-members of the Security Service?*

67. It would seem evident that no single device or remedy will provide the checks and balances required for the proper governance of a security service in a democracy. Arrangements designed for regular review of the Security Service's operations will not likely be appropriate for decisions that must be made when the country faces a major crisis or emergency. Similarly, it may be that machinery designed for case-by-case review of government decisions affecting the rights of an individual based on Security Service reports would not lend itself to the direct "auditing" of Security Service operations. But it is desirable that there be some coherence in the mixture of arrangements which is finally established. And it is essential that proposals for institutional change be assessed not only in terms of their effect on the rights and interests at stake in the

field of security but also in terms of their compatibility with the institutional framework of parliamentary and responsible government.

Relations with the Provinces

68. Since the authority of the Security Service is derived from the federal Parliament and Executive, it is important to ascertain the scope of federal jurisdiction under the Constitution for "national security" activities. Important cases concerning constitutional jurisdiction in relation to national security and law enforcement have recently been heard by the Supreme Court of Canada. Even when the questions raised in these cases are settled by the Court, further constitutional issues may remain to be resolved. Simply designating a cluster of responsibilities as "national" security problems does not in itself bring them within federal jurisdiction.

-- *What, for instance, is the provincial role in countering subversion of the provincial constitution and its democratic processes? What is the federal role?*

69. Whatever the answers are to these questions of constitutional law, there will be a practical need for effective federal-provincial cooperation in security matters. This is especially true with respect to domestic terrorist activities or subversion which threaten local communities and necessarily involve action by locally based peace officers.

-- *Do effective means of cooperation between local police and the RCMP Security Service exist in Canada -- both in those provinces where the RCMP (under contract) provides provincial and municipal police services as well as in those provinces (Ontario and Quebec) where it does not?*

The Media and the Public

70. It has already been stated above that an effective Security Service requires public understanding and support.

-- *Are there adequate and appropriate means of providing the public with information about the activities of the Security Service?*

-- *Given the need for secrecy inherent in the work of a security service, how much information can be provided? How should it be disseminated?*

- *What relationship should the Security Service have with the media?*
- *Is there a need for some new approaches that will diminish leaks and unauthorized disclosures and avoid the danger of attempting to manipulate press coverage of security issues?*

71. In Canada there is no forum for sustained and informed public discussion of national security problems, or independent research into these problems. Consideration of these questions occurs, for the most part, only when there are spectacular scandals or leaks.

- *In an area of government which so vitally affects the liberty and the security of Canadians, should there be an independent institution which could study these questions on an on-going basis?*

Such an institution might bring together members of all three branches of government -- executive, legislative and judicial -- from both levels of government with representatives of major public interest groups, journalists and academics. The Commission would be interested in receiving submissions on the public's "need to know" and the best means of meeting that need.

III

STRUCTURE OF THE SECURITY SERVICE

72. There are a number of important questions about the structure, composition and organization of the Security Service itself which must be addressed by the Commission. Effective supervision and review mechanisms from without cannot be substitutes for organizational strengths within. There are two basic criteria for measuring those strengths: the organization's capacity to deal with the threats to national security and its responsiveness to the laws and standards of conduct which Canadians require it to observe.

73. The structure of the RCMP Security Service as Canada's major national security agency has some unique features. In most of the western democracies, there is a security service or intelligence agency separate from the police. In those countries where the principal security and intelligence agency is part of a national police force, it is not part of a force such as the RCMP which is the largest police force in the country with a long and established tradition carrying out major national law enforcement responsibilities, as well as providing a significant proportion of police services at the local level.

A Separate and Civilian Security Service?

74. A major recommendation of the Royal Commission on Security was to take the Security Service out of the RCMP and establish it on an independent footing as an entirely civilian organization. This recommendation was not adopted by the Government. The Security Service remained within the RCMP but, as Prime Minister Trudeau indicated in 1970, it was to become increasingly civilian in its composition and autonomous within the RCMP. In 1970 a non-member of the Force, Mr. John Starnes, was appointed Director-General of the Security Service with the status of Deputy Commissioner. Mr. Starnes was succeeded in this office by another non-member, General Michael Dare.

75. This Commission of Inquiry must re-examine this fundamental issue of whether or not the Security Service should be separated from the RCMP. One of the primary reasons the earlier Commission favoured a separate security service was its belief that the staff needed for a good security service could more readily be secured through an organization which was not subject to methods of recruitment, training and classification appropriate for a police force. That belief was coupled with the convic-

tion that the intelligence gathering tasks of a security service are sharply differentiated from law enforcement tasks of a police force. In both the United Kingdom and Australia, it is felt that liberty is best preserved when those who are responsible for collecting what is primarily "political" intelligence do not possess police powers (such as arrest, search and seizure).

76. There are those, on the other hand, who regard the inclusion of the Security Service within the RCMP as providing the very discipline and safeguards required for a security service. It is also argued that separation of the Security Service would inevitably lead to the duplication of intelligence services within the RCMP or other police forces. Consideration of this possibility could be assisted by examining the experience of other countries such as Great Britain and Australia in coordinating the activities of independent security and intelligence agencies with those of "Special Branches" of the police.

77. Separation of the Security Service from the RCMP is not the only structural change that can be contemplated. There may be merit in a change in the other direction which integrates the Security Service more closely into the RCMP.

-- *Should the Security Service become less autonomous and more of an integral part of the RCMP?*

There might be support for changes of this kind especially with regard to domestic subversion investigations where conventional police methods and policies may be deemed desirable. In the same vein, it has been suggested that the Security Service might be reduced to a small civilian intelligence organization without police powers but within the RCMP, cooperating with locally based RCMP and other police forces where the exercise of police powers is required.

78. Assessment of structural changes of this kind require careful consideration of the feasibility and wisdom of separating responsibility for counter-espionage operation from responsibilities in the field of counter-subversion or counter-terrorism. Also, careful study must be made of the problems of coordination and cooperation which may arise between a separate security or quasi-separate "civilian" security service and regular police forces. And finally, in considering any proposed structural reorganization of security services the impact on staff continuity and relationships with foreign security and intelligence agencies must be taken into account.

Position of the Director-General

79. The position of the Director-General is a matter of great concern in any discussion of the future structure of the Security Service.

- Does the present structure in which the Director-General is subordinate to the Commissioner of the RCMP give the position the domestic and international status appropriate for the head of such an agency?
- Are there ways in which public confidence in the non-partisan quality of the appointment could be increased?
- If the Security Service remains within the RCMP, what should the Director-General's relationship be to the Commissioner?
- What kind of matters relating to the Security Service should require the approval of the Commissioner of the RCMP?
- Are there any matters on which the Director General can or should report directly to the Solicitor-General or the Prime Minister, without consulting the Commissioner, or without his knowledge?

Staffing and Management Questions

80. No matter how the Security Service is structured or re-structured, there are some fundamental questions concerning its personnel policies which must be answered.

- What are the skills required for carrying out the functions of a security service?
- What are the ingredients of good judgment required of responsible security service officers?
- How are persons with the requisite qualities best recruited and trained?
- What classification system is appropriate for such a service?
- How far does the ethos and organization of the RCMP permit a system of personnel management required for the Security Service?

In addressing these questions, it is essential to look in a more penetrating way than has been done heretofore at the extent to which the gathering of intelligence about foreign espionage, domestic subversion or terrorism requires personal qualities and an organizational environment different from those of a regular police force.

81. There are also some basic questions of management at the operational level that must be considered. Foremost amongst these is the kind of supervision which should be provided by senior officers.

- *How closely should officers in the field be supervised by their commanding officers? How centralized should such supervision be?*
- *How effectively is the new system of internal audit working?*

These questions are important to ask of any police organization. But where the choice of intelligence gathering methods and the carrying out of countering activities can bear so directly on vital matters of state security and individual liberty, arrangements may be called for which are different from those appropriate for a regular police force. In approaching these questions one should again take cognizance of the fact that the activities of security and intelligence agencies seldom lead to prosecutions in the courts. Consequently the judicial scrutiny of police conduct and decision-making applies much less frequently to the activities of a security service.

Employment Conditions and Internal Discipline

82. Another cluster of issues relates to the employment conditions within the RCMP, particularly internal discipline procedures. The Marin Commission recently revealed the maze of directives which governs the conduct of members of the Force. The Commission called for a less militaristic approach to discipline and made recommendations to introduce more procedural justice in RCMP discipline. Recent proposals to amend the RCMP Act (Bill C-50) go some way towards implementing these proposals.

- *Do the changes proposed in Bill C-50 provide a fairer and more effective system of internal discipline for members of the Security Service?*
- *As a civilian member of the Force, the Director-General of the Security Service has no formal discipline powers. Should this be changed?*

83. Recent activities suggest that a member of the RCMP may be faced with a serious dilemma when asked to carry out an order which he perceives to involve a transgression of law or a highly improper act. Refusal to obey a "lawful" order can lead to discipline ranging from a reprimand or transfer to a year's imprisonment. On the other hand, following such an order, even though it was regarded as lawful by his superior officers, may make the member liable to civil or criminal sanctions.

- *How can the balance best be struck between the need for responsible and morally sensitive members*

CONCLUSION

84. There are a great many difficult questions in this agenda of issues. Many of these questions have not, up to this point in Canadian public life, been given the attention they deserve. The questions have an important bearing on the security and the liberty which Canadians will enjoy not just in the short run but possibly for decades to come. There are no simple answers to such questions. Canadians are invited to give these issues thoughtful consideration and to assist the Commission in developing recommendations for the policies and procedures which in the future should govern those activities of the RCMP concerned with protecting the security of Canada.

APPENDIX A

(The Commission's Terms of Reference)

P.C. 1977-1911



Certified to be a true copy of a Minute of a Meeting of the Committee
of the Privy Council, approved by His Excellency the Governor
General on the 6 July, 1977

PRIVY COUNCIL

WHEREAS it has been established that certain persons who were members of the R.C.M.P. at the time did, on or about October 7, 1972, take part jointly with persons who were then members of la Sûreté du Québec and la Police de Montréal in the entry of premises located at 3459 St. Hubert Street, Montreal, in the search of those premises for property contained therein, and in the removal of documents from those premises, without lawful authority to do so;

WHEREAS allegations have recently been made that certain persons who were members of the R.C.M.P. at the time may have been involved on other occasions in investigative actions or other activities that were not authorized or provided for by law;

WHEREAS, after having made inquiries into these allegations at the instance of the Government, the Commissioner of the R.C.M.P. now advises that there are indications that certain persons who were members of the R.C.M.P. may indeed have been involved in investigative actions or other activities that were not authorized or provided for by law, and that as a consequence, the Commissioner believes that in the circumstances it would be in the best interests of the R.C.M.P. that a Commission of Inquiry be set up to look into the operations and policies of the Security Service on a national basis;

WHEREAS public support of the R.C.M.P. in the discharge of its responsibility to protect the security of Canada is dependent on trust in the policies and procedures governing its activities;

AND WHEREAS the maintenance of that trust requires that full inquiry be made into the extent and prevalence of investigative practices or other activities involving members of the Royal Canadian Mounted Police that are not authorized or provided for by law.

THEREFORE, the Committee of the Privy Council, on the recommendation of the Prime Minister, advise that, pursuant to the Inquiries Act, a Commission do issue under the Great Seal of Canada, appointing

Mr. Justice David C. McDonald of Edmonton, Alberta

Mr. Donald S. Rickerd of Toronto, Ontario

Mr. Guy Gilbert of Montreal, Quebec

to be Commissioners under Part I of the Inquiries Act:

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

The Committee further advise that the Commissioners:

1. be authorized to adopt such procedures and methods as the Commissioners may from time to time deem expedient for the proper conduct of the inquiry;
2. be directed that the proceedings of the inquiry be held in camera in all matters relating to national security and in all other matters where the Commissioners deem it desirable in the public interest or in the interest of the privacy of individuals involved in specific cases which may be examined;
3. be directed, in making their report, to consider and take all steps necessary to preserve
 - (a) the secrecy of sources of security information within Canada; and
 - (b) the security of information provided to Canada in confidence by other nations;
4. be authorized to sit at such time and at such places as they may decide from time to time, to have complete access to personnel and information available in the Royal Canadian Mounted Police and to be provided with adequate working accommodation and clerical assistance;
5. be authorized to engage the services of such staff and technical advisers as they deem necessary or advisable and also the services of counsel to aid them and assist in their inquiry at such rates of remuneration and reimbursement as may be approved by the Treasury Board;
6. be directed to follow established security procedures with regard to their staff and technical advisers and the handling of classified information at all stages of the inquiry;
7. be authorized to exercise all the powers conferred upon them by section 11 of the Inquiries Act; and
8. be directed to report to the Governor in Council with all reasonable dispatch and file with the Privy Council Office their papers and records as soon as reasonably may be after the conclusion of the inquiry.

The Committee further advise that, pursuant to section 37 of the Judges Act, His Honour Mr. Justice McDonald be authorized to act as Commissioner for the purposes of the said Commission and that Mr. Justice McDonald be the Chairman of the Commission.

CERTIFIED TO BE A TRUE COPY
COPIE CERTIFIÉE CONFORME



ASSISTANT CLERK OF THE PRIVY COUNCIL
LE GREFFIER ADJOINT DU CONSEIL PRIVÉ

APPENDIX B

OFFICIAL SECRETS ACT
R.S.C. 1970, Chap. 0-3
Amended 1973, c.50, ss. 5 and 6;
proclaimed in force June 30, 1974

Section 16

New by 1973, c.50, s.6:

16.(1) Part IV.1 of the Criminal Code does not apply to any person who makes an interception pursuant to a warrant or to any person who in good faith aids in any way a person whom he has reasonable and probable grounds to believe is acting in accordance with a warrant, and does not affect the admissibility of any evidence obtained thereby and no action lies under Part I.1 of the Crown Liability Act in respect of such an interception.

(2) The Solicitor General of Canada may issue a warrant authorizing the interception or seizure of any communication if he is satisfied by evidence on oath that such interception or seizure is necessary for the prevention or detection of subversive activity directed against Canada or detrimental to the security of Canada or is necessary for the purpose of gathering foreign intelligence information essential to the security of Canada.

(3) For the purposes of subsection (2), "subversive activity" means

(a) espionage or sabotage;

(b) foreign intelligence activities directed toward gathering intelligence information relating to Canada;

(c) activities directed toward accomplishing governmental change within Canada or elsewhere by force or violence or any criminal means;

(d) activities by a foreign power directed toward actual or potential attack or other hostile acts against Canada; or

(e) activities of a foreign terrorist group directed toward the commission of terrorist acts in or against Canada.

(4) A warrant issued pursuant to subsection (2) shall specify

(a) the type of communication to be intercepted or seized;

(b) the person or persons who may make the interception or seizure; and

(c) the length of time for which the warrant is in force.

(5) The Solicitor General of Canada shall, as soon as possible after the end of each year, prepare a report relating to warrants issued pursuant to subsection (2) and to interceptions and seizures made thereunder in the immediately preceding year setting forth

(a) the number of warrants issued pursuant to subsection (2),

(b) the average length of time for which warrants were in force,

(c) a general description of the methods of interception or seizure utilized under the warrants, and

(d) a general assessment of the importance of warrants issued pursuant to subsection (2) for the prevention or detection of subversive activity directed against Canada or detrimental to the security of Canada and for the purpose of gathering foreign intelligence information essential to the security of Canada,

and a copy of each such report shall be laid before Parliament forthwith upon completion thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

APPENDIX C

RECORD OF CABINET DECISION

Meeting of March 27, 1975

The Role, Tasks and Methods of the
RCMP Security Service

The Cabinet agreed that:

- a) the RCMP Security Service be authorized to maintain internal security by discerning, monitoring, investigating, deterring, preventing and countering individuals and groups in Canada when there are reasonable and probable grounds to believe that they may be engaged in or may be planning to engage in:
 - i) espionage or sabotage;
 - ii) foreign intelligence activities directed toward gathering intelligence information relating to Canada;
 - iii) activities directed toward accomplishing governmental change within Canada or elsewhere by force or violence or any criminal means;
 - iv) activities by a foreign power directed toward actual or potential attack or other hostile acts against Canada;
 - v) activities of a foreign or domestic group directed toward the commission of terrorist acts in or against Canada; or

- vi) the use or the encouragement of the use of force, violence or any criminal means, or the creation or exploitation of civil disorder, for the purpose of accomplishing any of the activities referred to above;
- b) the RCMP Security Service be required to report on its activities on an annual basis to the Cabinet Committee on Security and Intelligence;
- c) the Solicitor General prepare for consideration by the Prime Minister a public statement concerning the role of the RCMP Security Service.

R.F. Charron
Supervisor of Cabinet Documents

April 1, 1975.