Commission of Inquiry Concerning
Certain Activities of the R.C.M.P.:
Supplement to Part VI of the Third Report

INDEX

CHAPTER 3

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

A. DEPARTMENT OF NATIONAL REVENUE

Introduction

1. In Part III, Chapters 5 and 6 of our Second Report we described in detail the policies and practices of the C.I.B. and the Security Service respectively in their attempts to gain access to information held by the Department of National Revenue relating to taxpayers. We received testimony on this subject, with respect to the C.I.B. on May 24, 25, 29, 30, 31, 1978, and July 11 and 13, 1978, and with respect to the Security Service on July 12, October 13, November 22, 30 and December 7, 1978 and February 6 and April 5, 1979. The public testimony is found in Volumes 47-51, 62 and 63 and the in camera testimony is transcribed in Volumes C17, C23, C31, C35, C37, C42 and C48. Much of the testimony taken in camera was subsequently released publicly in Volumes 146-149. Those who testified at the hearings were Inspector R.D. Crerar, Sgt. V. Pobran, Sgt. T. Kozij, Mr. M.G. Bradshaw, Mr. D.A. Clute, Supt. M. Coutu, Supt. F.A. Howe, Supt. P.J. Briere, Staff Sgt. C.V. Smith, Mr. S. Cloutier, Insp. R.B. Claxton, X and Chief Supt. R.M. Shorey.

2. The approaches made by the C.I.B. and the Security Service to the Department of National Revenue to gain access to information and the arrangements worked out in that regard were completely separate. For that reason we shall discuss the two sides of the Force separately here. However, as we pointed out in our Second Report, the application of the law is precisely the same with respect to both. The conclusion, which we reached for the reasons given in our Second Report, were:

(a) Furnishing of information, given to the Department by the taxpayer on his income tax return, to the R.C.M.P. for purposes other than enforcement of the Income Tax Act -- for example, for a criminal investigation -- is and has been a contravention of the Act on the part of any Departmental official communicating the information. If, in any of the specific cases, a member of the R.C.M.P. abetted (encouraged) the source, he was a party to the offence under section 21 of the Criminal Code. If he "counselled" or "procured" the source to commit it, he was a party to the offence under section 22 of the Criminal Code. We did not receive evidence as to such encouragement, counselling or procurement in specific cases. We note that the offence is a summary conviction offence; therefore there cannot be prosecution except within six months of the offence.

(b) No offence was committed if the information was communicated after the commencement of criminal proceedings.

(c) If any member of the R.C.M.P. who received such information passed it on to another member not engaged in an investigation relating to the enforcement of the Act, he may have committed an offence.

(a) C.I.B.

Summary of facts

3. We heard no evidence as to the details of any specific cases in which the C.I.B. received information from the Department of National Revenue for purposes other than enforcement of the Income Tax Act. We did, however, receive evidence that a number of such cases did occur. That evidence was in written form, being replies from the different divisions to a questionnaire sent out by R.C.M.P. Headquarters at our request. The questionnaire and the replies are filed as Exhibit GC2, Tabs 12-27 inclusive.

(b) Security Service

Summary of facts

4. The Security Service was able to determine that between August 1971 and the Fall of 1977 there were 132 instances in which they obtained information from the Department of National Revenue. Although we heard no evidence as to the details of those cases, the records of the Security Service are such that they should be readily available. The information with respect to them was collected by Staff Sgt. C.V. Smith and he testified before us in this regard. His testimony is found in Volume C17 and the material from which the figures were compiled is found in Exhibits GC3 and GC4.

5. Much of the information obtained by the Security Service -- indeed in 52 of the 132 instances mentioned in the previous paragraph -- came through two sources at Headquarters of the Department of National Revenue, whom

we have called X and someone in the Department of National Revenue who succeeded X. We described the relationship between the Security Service and X in some detail in Part III, Chapter 6, of our Second Report. Security Service Headquarters had given its approval to the establishment and the continuation of that relationship.

6. All contact with "X" and X's successor was kept on a very restricted basis. The contact with "X" was initially made sometime in 1969, when Insp. J.G. Long was the officer in charge of the Sources Branch of the Security Service. In 1969, Insp. R.M. Shorey was appointed officer in charge of the Security Service in "A" Division, succeeding Insp. B. Nutt, who introduced Insp. Shorey to X sometime in 1969. In 1971, Insp. Shorey introduced X to his successor, Supt. McKernan. Although there is some evidence that Assistant Commissioner Parent may have known X's identity, that identity was generally unknown to Insp. Shorey's superiors. However, it is clear that the existence of such a source and the nature of the arrangement had been approved by Insp. Shorey's superiors. We have already discussed the knowledge of those senior officers in Part III, Chapter 5, of this Report. X ceased supplying information to the Security Service in 1973. The evidence indicates that X was succeeded by another source, with whom a relationship existed until 1977.

(c) Conclusions and recommendations

7. There is evidence that both the C.I.B. and the Security Service side of the Force received information from sources within the Department of National Revenue for purposes unrelated to enforcement of the Income Tax Act. Based on our interpretation of the law, it is clear that

those in the Security Service who abetted sources in the Department or "counselled" or "procured" them to provide such information were, by virtue of sections 21 and 22 of the Criminal Code, parties to violations of the provisions of section 241 and its predecessor, section 133, of the Income Tax Act. We recommend that the relevant evidence in the transcripts of hearings before us and the exhibits filed before us be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved. As we noted in our Second Report, the substantive offence under the Income Tax Act is punishable by summary conviction and therefore charges must be laid within six months of the commission of the offence.

8. Whether or not charges are laid, we find unacceptable the conduct of those members of the R.C.M.P. who participated in the transfer of this information. The only members of the R.C.M.P. whom the evidence directly implicates are Insp. Nutt, Insp. Shorey and Supt. McKernan. We have no evidence of any individuals involved on the C.I.B. side nor of those in the field on the Security Service side who apparently were involved.

B. UNEMPLOYMENT INSURANCE COMMISSION

Introduction

9. The policies and practices of the C.I.B. and the Security Service in obtaining access to data held by the Unemployment Insurance Commission (U.I.C.) and the extent and prevalence of the practice, were set out in Chapters 5 and 6 of Part III of our Second Report. Public hearings were held on this topic on June 20 and 21 and July 6 and 7, 1978, and the testimony is found in volumes 57, 58, 60 and 61. One hearing was held in camera on June 22, 1978 and that testimony is found in volume C16. The witnesses heard were Assistant Commissioner H. Jensen, Inspector R.B. Claxton, Sgt. G. Rehman, Mr. Y. Charlebois, Mr. B. Dertinger and Mr. R.G. Beatty. In addition, Commission Counsel made a statement on June 22, 1978, which is found in volume 59. One member also made representations in response to a notice given to him under the provisions of section 13 of the Inquiries Act. His representations are found in volume C125.

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

(a) C.I.B.

Summary of Facts

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

(b) Security Service

Summary of Facts

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

(c) Conclusions and recommendations

13. In our Second Report we concluded that

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

14. We recommend that the relevant evidence in the transcripts of hearings and the exhibits filed be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigations, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain details of the incidents. Upon completion of such investigation, the Attorney General of the circumstances, charges should be brought against the persons involved.

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

Introduction

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

Summary of Facts

16. The only case of which we are aware, in which the R.C.M.P. obtained access to information in the files of the Department of Industry, Trade and Commerce, where such

information had been obtained by that department under the Industrial Research and Development Incentives Act, was described briefly in Part III, Chapter 5, of our Second Report. It occurred in 1974.

Conclusions and recommendations

17. We recommend that Exhibit N-1 be referred to the Attorney General of Canada and that he have the Department of Justice conduct such investigation, including review of the appropriate R.C.M.P. files, as he considers necessary to obtain the details of the one incident described in the documents contained in that exhibit. Upon completion of such investigation, the Attorney General of Canada should determine whether or not, in all the circumstances, charges should be brought against the persons involved.

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

Introduction

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

Summary of Facts

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

...four cases were reported in which approaches were made by the Force to the Family Allowances Division other than in regard to the administration of the Family Allowances Act.

(i) In an investigation of the abduction of a seven-year-old child, the approach was made to determine whether a new application had been made for family allowance in regard to the abducted child. The Department advised that no new application had been made. (The mere disclosure that an application had or had not been made would not be prohibited).

(ii) In 1970 co-operation was received in regard to a murder investigation. No further details were given.

(iii) A contact was made with the local office in an investigation under the Immigration Act. No further details were given.

(iv) A request was made in a fraud investigation. It does not appear that any information was given out, the disclosure of which would be prohibited.

Conclusions and recommendations

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

CHAPTER 4

SPECIFIC MAIL CHECK CASES

Introduction

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

2. Evidence with respect to mail check cases was received by us in public on December 13, 14, 15, 1977, January 31, 1978, and February 1, 14 and 15, 1978 and is found in Volumes 6, 7, 8, 17, 18, 22 and 23, and in camera on December 20, 1977, February 15 and 16, 1978 and is found in Volumes C1, C2 and C3. Those testifying on this subject were Inspector A.D.S. Burchill, Supt. E.A. Marshall, Inspector R.I. MacEwan, Asst. Commissioner M.S. Sexsmith, Asst. Commissioner (ret'd.) H.C. Draper, Chief Supt. (ret'd.) G. Begalki, Asst. Commissioner T.S. Venner, Mr. Paul Boisvert, S/Sgt. J. Pollock, S/Sgt. A. Kay, Inspector R.B. Claxton, Supt. A. Barr, S/Sgt. C.V. Smith, and S/Sgt. L.F. Andrichuk.

3. As the number of incidents of mail check operations, as disclosed to us by the R.C.M.P., exceed 1000 for the period of 1970-77 alone, the focus of our inquiry into this practice was on its "extent and prevalence", not on the details of individual cases. Several specific cases

were described to us in oral testimony, by way of examples of the circumstances in which the technique was used. Even in those cases time did not permit us to hear all of the relevant evidence.

A. SECURITY SERVICE

Summary of facts

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

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

5. The information provided to us by the Security Service disclosed that from November 1970 to the end of December 1977 there were 91 completed mail check operations, of which six were Cathedral A cases, 19 were Cathedral B cases and 66 were Cathedral C cases. Details as to the province in which each operation took place, the identification of the target, the date of the operation and

the Security Service file cases filed with us as Exhibit BC-3. Further details were provided to us by the Security Service on all these operations and we have given the Clerk of the Privy Council, on behalf of the Governor in Council, those additional details. In addition, details of one case, the Omura case, are found in Volumes 8, 18 and 23 of the transcripts of our hearings.

Conclusions and recommendations

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

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

(b) The same remarks apply to photographing the exterior of an envelope (what the Security Service has called Cathedral 'B').

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

B. C.I.B.

Summary of facts

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

9. The statistics provided to us with respect to mail check operations for the years 1970-1977 disclosed that there were 954 mail check operations, of which 799 involved the opening of pieces of mail. However, these figures cannot be relied upon because of differences in

interpretation, by those reporting at the division level, of the definition of "letter", "first class mail", "post letter" and "delivered".

Conclusions and recommendations

10. In the testimony before us on this subject, some details were given with respect to six operations. The testimony relating to five of those cases is found in Volume 18 of the public testimony and with respect to the other is found in Volume C2 of the in camera testimony. With regard to these six cases, we recommend that the evidence and the R.C.M.P. files with respect to them be referred to the Attorney General of Canada who should have members of the Department of Justice conduct such an investigation as he considers necessary. Upon completion of the investigation the Attorney General of Canada should determine, in each case, whether a prosecution ought to be launched against the persons involved.

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

C. GENERAL CONCLUSIONS

12. The volume of cases of mail check operations on the Security Service and C.I.B. side of the Force is overwhelming. We have discussed them only in the light of possible violations of the Post Office Act. In each case

there may also have been a trespass to the item of mail interfered with. We do not make light of that and in our opinion it ought to be brought home very clearly to members of the R.C.M.P. and of the security intelligence agency that such an interference with other persons' property constitutes a trespass and is therefore unlawful. However, because mail check operations were clearly a policy of the Force, we do not consider that those who planned and participated in specific cases should be punished by virtue only of the trespass involved.

CHAPTER 11

MATTERS CONCERNING AN UNDERCOVER OPERATIVE, WARREN HART

Introduction

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

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

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

4. We inquired in depth into Mr. Hart's complaints, and other matters about which he did not complain but which were

incidents in his career with the R.C.M.P. Certain issues he raised might not in themselves have merited the time devoted to hearings, but we considered others to be of substantial importance, either in themselves or as illustrations of policy problems.

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

Summary of facts

6. In April 1971, at the request of the United States Department of Justice, Mr. Hart met Sergeant I.D. Brown of the R.C.M.P. in Washington, D.C. Mr. Hart understood from a member of the Department of Justice that the R.C.M.P. needed someone with expertise in infiltrating black radical organizations. After Sergeant Brown consulted with R.C.M.P. Headquarters in Ottawa, the decision was made that Mr. Hart would go to Canada to work at a salary of $900 a month plus $100 a month to cover the expenses of a monthly visit to his family in Baltimore. There was no discussion about the payment of Canadian income tax. Mr. Hart entered Canada and went to Toronto where he again met Sergeant Brown, who told him that his target was Roosevelt Douglas and that he was to attend black meetings to obtain

information covering the future plans of black extremists. Mr. Douglas was then in jail but when he was released Mr. Hart became, in Mr. Hart's own words, "his chauffeur, his bodyguard and his confidant". His R.C.M.P. "handlers", who gave him instructions and debriefed him regularly, were Sergeant Brown and Constable Laird. Four or five months after his arrival Mr. Hart first met Inspector James S. Worrell, who, he understood, was the officer in charge of matters involving himself. In fact, it appears that Inspector Worrell, who was in Toronto, was at the time not really in charge, for Sergeant Brown was receiving instructions from Headquarters in Ottawa.

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

8. What was the R.C.M.P.'s assessment of Mr. Hart's services? Chief Superintendent Begalki confirmed in testimony that in February 1973, he recorded that Mr. Hart was "sharp and intelligent" and that Mr. Begalki considered that the not inconsiderable faith Mr. Hart had in his own abilities made it possible to survive in a very dangerous milieu. As of 1973 Sergeant Plummer, who succeeded Sergeant Brown as Mr. Hart's principal handler, considered that Mr. Hart was performing his job well. As late as the fall of 1975 Sergeant Plummer thought so highly of Mr. Hart's usefulness that he wanted Mr. Hart to accompany Mr. Douglas

on a trip across Canada. Inspector Worrell testified that Mr. Hart performed excellent work for the R.C.M.P. at times and that at other times his conduct was a matter of concern, but that generally speaking his efforts were quite good, especially in 1972 and early 1973. Inspector Worrell testified that he formed the opinion that Mr. Hart was "a sand lot thug", "an egomaniac", and a man whose ego was "giant-sized"; this opinion was based on reports he received, as Inspector Worrell did not deal with Mr. Hart personally.

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

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

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

(c) Surreptitious entry and reading mail;

(d) The cache of firearms;

(e) Kenora;

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

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

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

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

(j) The border incidents;

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

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

(m) Was Mr. Hart offered permanent employment?

Specific issues

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

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

11. According to Mr. Hart, he understood that the purpose of the plan to deport Mr. Douglas and himself was to enhance Mr. Hart's "cover" and to increase his credibility among black radicals. However, Security Service documentation at the time and the testimony of R.C.M.P. witnesses establish that there was a more urgent reason. Sergeant Brown testified that the plan to arrest Mr. Douglas and Mr. Hart

was developed in order to defuse a plot to place a bomb at Sir George Williams University and to kill two professors there. In order to defuse the plot and "pull" Mr. Hart out of the situation it was decided that it was necessary to have him arrested and deported.

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

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

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

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

with his people". Mr. Begalki also told us that he believes that the senior Immigration official felt that the facts of the deportation procedure would be communicated upward in the Department and that the Minister would "remove the order".

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

16. According to a memorandum dated February 24, 1978, from the Deputy Minister to the Minister of Manpower and Immigration, the senior Immigration official recalls that the proposed line of action was discussed and agreed to with Senior Management and the Minister, the Honourable Otto

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

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

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

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

and that one of the two Immigration Department officials so advised

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

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

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

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

I have been asked to reply to your letter of October 3, 1976, referred from the office of the Prime Minister, concerning your desire to be admitted to Canada for permanent residence.

I have noted with interest the contents of your letter. On reviewing our file, however, I note that you were deported from Canada on December 9, 1971, and at that time you admitted to a conviction in the United States in 1953 for assault and battery. As assault and battery is considered a crime involving moral turpitude, it places you within a statutory prohibited class, paragraph 5(d) of the Immigration Act.

In view of the above, I am sorry to have to tell you that your admission to Canada either as an immigrant or non-immigrant (visitor) is prohibited and we are, therefore, unable to accede to your request.
(Ex. Q-11.)

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

Conclusion

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

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

21. Sergeant Brown testified that he told Mr. Hart before he entered Canada in April 1971 and told him again each time he returned to Canada after his deportation that he was to come in as a "visitor" and not state his real purpose in coming to Canada. As Sergeant Brown confirmed in his testimony, Mr. Hart did return to Canada, after his deportation, as a "visitor". He travelled back and forth to the United States on other occasions thereafter.

Conclusion

22. A question arises as to whether an offence was committed by Mr. Hart each time he returned to Canada after being deported, and by Sergeant Brown who encouraged and expected him to do so? Section 46 of the Immigration Act provided as follows:

46. Every person who

...

> (b) comes into Canada or remains therein by force or stealth, or, knowing it to be false, misleading or improper, by reason of a false or improperly issued passport, visa, medical certificate or other document pertaining to his admission or other false or misleading information or fraudulent means.
>
> ...
>
> (j) knowingly induces, aids or abets or attempts to induce, aid or abet any person to violate a provision of this Act or the regulations or to commit any offence under this Act or the regulations, is guilty of an offence and is liable on summary conviction ...

23. For the reason previously given, we do not comment on whether Mr. Hart's conduct constituted the commission of an offence. However, if Mr. Hart, by giving "misleading information" to the Immigration official at the time of each entry, committed an offence, then Sergeant Brown may have committed an offence by knowingly abetting (i.e. encouraging) him to do so.

24. However, no prosecution for such an offence would now be possible, as the offence is a summary commission offence and the six-month limitation period for such offences has expired long since. Quite apart from whether there were offences, our opinion is that such conduct by Mr. Brown was unacceptable.

(c) Surreptitious entry and reading mail

25. Mr. Hart told us that on one occasion he entered a friend's apartment without his knowledge in order to obtain access to some mail which the friend had received. He said this was done as a result of joint planning with his R.C.M.P. handlers, Messrs. Plummer and Laird. Some of the mail had not previously been opened and it was opened by him. Corporal Laird, however, has filed a Statutory Declaration with us that at no time did he instruct Mr. Hart to enter an apartment without the occupant's consent or to open that person's mail.

Conclusion

26. For the reason previously given, we do not comment on the legal significance of Mr. Hart's conduct. However, if his conduct was civil trespass and an offence under the Petty Trespass Act of Ontario, any handler who instructed him to enter was a conspirator in the eyes of the law of tort, and perhaps in the eyes of the criminal law, for conspiracy to violate a provincial statutory prohibition is an offence: see our Second Report, Part III, Chapter 2.

(d) The cache of firearms

27. One day in 1972 a black leader in Toronto advised Mr. Hart that some arms had been stolen from a sporting goods store in Toronto. Mr. Hart testified that he was told to drive to a particular location. When he arrived, the people he understood to be the thieves loaded a wooden case into his car. Mr. Hart took the case, which contained weapons,

to the house where he lived. The next morning he reported the matter to Sergeant Brown. Sergeant Brown and Mr. Hart agreed that Mr. Hart would keep the weapons. Later Sergeant Brown instructed him to move the weapons to a farm near Tweed, Ontario, and bury them there so that they would not be readily available to the radicals on the streets. There, Mr. Hart, pursuant to those instructions, delivered them to the owner of the farm and instructed him to retain them "until we need them". Five or six months later Sergeant Brown told him to bring the weapons to Toronto. When Mr. Hart went to the farm he discovered that the farm owner had sold some of the weapons and vanished. He did dig up four or five rifles that had rusted and became non-operational and took them to Sergeant Brown.

28. Mr. Hart denied knowledge of any fictitious burgling of the trunk of his car to make it appear that the weapons had been stolen and asserted that he had delivered them to Sergeant Brown. Sergeant Brown and Corporal Laird testified, however, that Mr. Hart delivered them to Corporal Laird and that, with Mr. Hart's knowledge, a plan was executed to make it appear that they had been stolen.

29. Mr. Hart testified that when the weapons were stolen from the sporting goods shop they were operational and they were left in that condition. Sergeant Brown understood that the weapons had been stolen but learned that they had not been reported to the police by anyone as having been stolen. Therefore, he says, he and his superiors had to decide whether to leave the weapons in Mr. Hart's hands or try to return them to the owner without compromising Mr. Hart. There were about 23 weapons, including shotguns, two

rifles, and a replica of a Thompson machine gun which was not operative and was just a toy. Some of the weapons were prohibited weapons. Sergeant Brown testified that he recalls that there was a name on the crate but not what the name was. However, a report placed on file at the time mentioned the name.

30. Sergeant Brown's testimony as to the handling of the weapons is to the same effect as that of Mr. Hart. Sergeant Brown added that, after Mr. Hart ultimately delivered them to Mr. Laird in the spring of 1973, Messrs. Brown and Laird turned them over to other members of the Security Service who then disposed of them. Their destruction "seemed like the best thing", as a means of preserving Mr. Hart as a source. Even at that time they had not been reported stolen, according to information provided by various police departments. No check was made with the company whose name appeared on the crate. Sergeant Brown stated that he decided not to return the weapons to their owner because to do so or to have them picked up by the local police or the R.C.M.P. would have destroyed Mr. Hart's usefulness as a source. Sergeant Brown told us that he kept the local police informed at all times that the weapons were in the possession of a reliable source, and, later, that they had been destroyed.

31. Sergeant Brown testified that the farm where the weapons were stored had been regarded by radicals as a potential guerrilla training camp, and he thought that if the camp were so developed the presence of the guns would provide an ideal excuse to raid the camp and "defuse the situation".

Conclusion

32. We examined the facts of this matter carefully because it appeared at first that perhaps Mr. Hart was in possession of property obtained by crime, contrary to section 312(1) of the Criminal Code. Indeed, even the R.C.M.P. in a brief suggested to us that that might be so. We do not believe that there was an offence, for we accept Mr. Hart's evidence and are satisfied that he received the stolen weapons with the sole intent of turning them over to peace officers -- namely his handlers. Nor do we believe that the handlers were guilty of that offence, for they notified the police force having jurisdiction of the existence of the weapons and the general circumstances.

33. However, the destruction of the weapons by members of the R.C.M.P. was inconsistent with any intention to return the weapons to their rightful owner. The destruction itself may have amounted to mischief, contrary to section 388, which makes it an indictable offence or an offence punishable on summary conviction. (The Crown has a choice of prosecuting as one or the other). However, if the value did not exceed $50, the offence was wilful damage contrary to section 388(1), and that is a summary conviction offence. As the few weapons that were left were rusted by the time of destruction, we believe that the offence could properly be regarded as the lesser offence, and if so the time limit for prosecution has passed long since.

34. Apart from criminal significance, we regard as unacceptable the liberties taken by whatever R.C.M.P. members were involved, in destroying the weapons without

doing more to locate their owner than inquire of the police whether a theft had been reported. The Security Service file discloses the name of a firm that appeared on the crate, and inquiries should have been made of that firm -- which may possibly never have noticed that the weapons were missing.

(e) Kenora

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

36. Mr. Hart testified that he does not recognize the name Donald R. Colborne of Thunder Bay. Mr. Colborne is a lawyer in that city. In January 1979, Mr. Colborne made a statutory declaration in which he stated that on or about June 30, 1975, he met a man who was accompanying Roosevelt

Douglas. From the facts given by Mr. Colborne it is evident that the man, whom he knew as "the General", was Mr. Hart. According to Mr. Colborne, the man "several times stated that he intended to steal weapons from persons in Thunder Bay", and "Boxes of grenades and other military-style weapons were referred to". Mr. Colborne says that the man "tried to incorporate me into his plan by enquiring if I would provide a safe place to cache the weapons after they had been stolen". Mr. Colborne says that he "declined to do so". Mr. Colborne says also that he does not know whether or not any weapons were actually stolen by "the General". We did not call Mr. Colborne as a witness. We assumed that if he were to testify, he would say what he said in his statutory declaration. We did ask Mr. Hart about Mr. Colborne's allegations. Mr. Hart denied having indicated in Thunder Bay that he intended to steal weapons or explosives, or having asked about a safe place to hide explosive devices or weapons in Thunder Bay.

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

Conclusion

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

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

39. Mr. Hart acknowledges that, while accompanying Roosevelt Douglas to Vancouver, British Columbia, he met one Gary Cristall. Mr. Cristall swore an affidavit in November 1978 in which he stated that he met Mr. Hart, whom he knew as "Clay Hart" and "the General", in the spring of 1975, and that in August 1975 he travelled with Mr. Hart and Roosevelt Douglas, in Mr. Hart's automobile, from Vancouver to the Mount Currie Indian Reserve. There, he said, during discussions with "several native persons, including Mount Currie band members and members of the American Indian Movement (A.I.M.) concerning fishing and hunting rights and land claims", Mr. Hart "claimed that he had American military experience as a paratrooper and that he was an expert in explosives". Mr. Cristall stated that Mr. Hart said he could provide unlimited supplies of high quality military equipment, including AK-47 automatic rifles, dynamite and plastic explosives and that he volunteered to train the native people that he met at Mount Currie in the use of dynamite and other types of explosives.

We did not call Mr. Cristall as a witness. He was interviewed by one of our investigators and we reviewed the transcript of the interview. We also read a short chapter from a book by Richard Fidler, "R.C.M.P.: The Real Subversives", which Mr. Cristall told our investigator was based on his experience with Mr. Hart. From all this it was clear that Mr. Cristall, if called to testify, would not be able to go beyond what he stated in his affidavit. Mr. Hart testified that, while he had met Mr. Cristall, the latter

was not at the Mount Currie Indian Reserve when Mr. Hart and Mr. Douglas were there. The contradiction between the two is of no importance to the issue whether Mr. Hart, as an agent of the R.C.M.P., did anything that was unlawful. Assuming everything in Mr. Cristall's affidavit to be true, there is nothing unlawful in what he alleges Mr. Hart said at the Reserve. It thus becomes immaterial whether Mr. Hart was accurate or not when, in his testimony, he told us that he did not meet Mr. Cristall at the Mount Currie Indian Reserve.

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

Conclusion

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

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

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

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

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

Conclusion

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

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

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

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

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

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

Conclusion

50. No offence was committed because Mr. Hart must be considered to have been a party to the conversation, and his consent to the taping prevented it from being unlawful. However, we note that he was present at the meeting between

Mr. Douglas and a Member of Parliament without the Solicitor General being notified, even after the event, that an R.C.M.P. undercover source had been present and had reported to the R.C.M.P. on the meeting. As with the meeting between Mr. Douglas and Mr. Allmand (the more so in the latter case because Mr. Allmand was the Minister who reported to Parliament concerning the R.C.M.P.), we consider it unacceptable that members of the R.C.M.P. should allow that to happen.

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

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

52. Sergeant Brown testified that Mr. Hart was never involved in criminal activities, and that Mr. Brown had authorized Mr. Hart's association with the criminal whom he had met while in jail in order to promote Mr. Hart's "cover" by developing an apparent explanation for Mr. Hart's

income. Corporal Laird, who backed up Sergeant Brown as Mr. Hart's handler from December 1971 until July 1973, told us that he knew of no criminal activities of Mr. Hart other than the border incident (if, we might add, it is in any way criminal).

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

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

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

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

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

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

receiving criminal information from Mr. Hart, without his expecting remuneration, for a period of five months, and that the officer of the other police force reported that Mr. Hart claimed to be extremely frustrated in the manner in which we treat criminal info. that he comes across in the course of his security service duties and expressed a genuine interest in helping to rid the city of the undesirable element.

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

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

This paragraph, we think, captures the essence of what was evidently felt by Security Service officers such as

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

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

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

Conclusion

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

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

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

(j) The border incidents

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

passenger. During questioning, Mr. Hart asked the American officials to telephone Sergeant Brown in Toronto. They did, and the result was that Mr. Hart was freed and returned to Toronto.

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

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

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

- On May 18, 1973, Hart attempted to smuggle Mileto into the U.S.A. at Niagara Falls. Mileto had been secreted in the trunk of Hart's automobile.

- U.S. Immigration officials discovered Mileto in Hart's automobile. A "fuss" ensued until Hart was able to make telephone contact with his "handlers". The U.S. authorities then permitted Hart to precede; Mileto was turned back to the Canadian side.

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

66. The memorandum also recorded that the Chief Superintendent "indicated that Hart had smuggled an Italian National, one Attilio Agostino, into the U.S.A. from Canada in 1971". The information in the R.C.M.P.'s file shows that

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

Conclusion

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

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

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

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

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

70. Inspector Worrell explained that one reason for the termination related to Mr. Hart's abiding by directions given by his handlers. He said that a notion developed at Headquarters that when Mr. Hart was out of the country, activity by targets seemed to quieten down, and the people at Headquarters wondered "whether this was a sort of self-perpetuating thing that we were in". A second reason given by Inspector Worrell for the termination was that

there was pressure from the Department of Immigration. According to Inspector Worrell, it was this that finally caused the decision to be made. The risks involved if Mr. Hart were arrested and the arrest became public were a matter of concern.

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

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

found in Immigration files: A memorandum in the Immigration file, dated August 19, 1975, recorded that a Departmental intelligence officer in Toronto had been asked a few days earlier for information concerning Warren Hart. An Immigration intelligence officer in Winnipeg had reported on Mr. Hart's visit with Mr. Douglas to Winnipeg. The August 19 memorandum stated that Mr. Hart "had been the subject of a USINS report of June 9, 1975 in which he was described as having a criminal background and potentially dangerous". We have read the United States Immigration and Naturalization Service report of June 9, 1975. It reported that a "reliable source" had reported that Mr. Hart is engaged in smuggling Italian nationals into the U.S. from Canada. He allegedly conceals the aliens in the trunk of a Cadillac sedan with Maryland license ASN-510. Hart has been reported to be a member of the BLACK LIBERATION ARMY who is wanted in the U.S. for criminal offenses. Because of his affiliations and his possible criminal background, he should be considered dangerous. We know how erroneous this report was, and we note that the Canadian Immigration file contains a note that the Toronto intelligence officer had contacted the F.B.I. and been advised that they had no record of any outstanding warrants.

73. The August 19 memorandum also stated that the departmental intelligence officer in Toronto had learned "that HART was a paid informer, in the employ of the R.C.M.P. and probably one or two U.S. police organizations". It then stated that on August 18 "it was learned that Hart had been ordered deported from Canada on 9/12/1971 and was thus illegally in Canada", and it continued: "R.C.M.P. sources in Toronto indicated most

strongly that no Immigration action be taken against Hart ...". The memorandum noted "the seriousness of the case (i.e. -- it is a case of great potential embarrassment for the Department and the Minister)" and that the Acting Director General of the Immigration Division had directed an Immigration official to contact the R.C.M.P. in Toronto in order to impress upon them the necessity for initiating discussions between the R.C.M.P. and this Department at the highest level regarding Hart. If the R.C.M.P. in Toronto were not willing to proceed in this matter [the official] was instructed to begin to proceed to take normal enforcement action against Hart, i.e. arrest Hart under the provisions of Immigration Act and proceed with deportation action.

Conclusion

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

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

75. In the autumn of 1975 senior R.C.M.P. officers were considering whether Mr. Hart's services should be retained or terminated. Finally the decision was made to terminate. Inspector Worrell met Mr. Hart and advised him of the decision. Mr. Hart testified that Mr. Worrell paid him $6,000 cash as severance pay. He stated that he deposited the $6,000 in his bank account. There is a receipt that is dated November 13, 1975, for $7,930, signed by Mr. Hart (Ex. Q-16), but he says that he does not recall having

signed it. (Mr. Hart denies that he met Mr. Worrell on November 13, 1975. In this he is clearly incorrect). Nor, he says, does he recall having been presented with a receipt for that amount to be signed. Mr. Hart was alone with Mr. Worrell at the time. Mr. Hart denies having been paid that amount. Yet, Sergeant McMorran testified that Mr. Hart told him that Mr. Worrell had paid him $7,930, and Mr. Worrell testified that he paid him $7,930.

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

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

78. Sergeant Plummer testified that on December 16, 1975, the date Mr. Hart finally left Canada, he paid Mr. Hart another $1668.00 and had Mr. Hart sign a receipt (Ex. Q-20). The money was to enable Mr. Hart to terminate his lease on an apartment in Toronto. Sergeant McMorran testified to the same effect. In addition he said that some other member of the R.C.M.P. had ascertained that it was not necessary for Mr. Hart to pay six months' rent, yet their superiors authorized the money to be paid to Mr. Hart to avoid further argument. This appears, from a reading of the file, to be correct.

Conclusion

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

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

(m) Was Mr. Hart offered permanent employment?

81. According to Mr. Hart, in 1972, when plans were being made for a trip he was to make to the Caribbean with the authority of the Security Service, he went to Ottawa and there met Inspector Begalki. According to Mr. Begalki and Sergeant Brown, the meeting was in February 1973. Mr. Begalki expressed satisfaction with Mr. Hart's work. They discussed the fringe benefits that had earlier been discussed in Baltimore, and, according to Mr. Hart, Mr. Begalki stated: "When this is over, we will give you a

position as a civilian employee, with the R.C.M.P." According to Mr. Hart, he would be employed as a "coordinator". Mr. Hart says that Mr. Begalki promised to put a letter on his file to that effect, an that on subsequent occasions he was assured that that had been done. In his testimony, Mr. Hart denied that what Mr. Begalki spoke of was only the possibility of a job with the R.C.M.P. Mr. Hart testified that Mr. Begalki said that in the letter to be placed on his file "a job offer would be made, something like a recommendation; in other words, I was to receive a job upon the termination of that type of employment". He says he equated such a recommendation with an offer.

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

83. Mr. Begalki confirmed in his testimony that there had been a discussion with Mr. Hart about long-term employment, pension plans and other matters, but his filed report indicates that the discussion occurred in Ottawa in February 1973. Mr. Begalki testified that the R.C.M.P. "could only cross the bridge for long-term employment after the first employment had ceased, and depending on the conditions of the day and his qualifications as they relate to the vacancies within the Force and the hiring practice of the Force, that the issue would have to be addressed at that time". Mr. Begalki said that he was sure that he told Mr.

Hart "that depending on the vacancies within the Force and the Force's needs, we could then possibly match up his qualifications with any vacancies". He said that he would have used the words "civilian member" but that he does not recall using the term "coordinator". He said that in the discussion Mr. Hart indicated that he wanted some security because his family situation was producing stress. Mr. Begalki stated that he "certainly made it clear that the problems he raised would have to be carefully studied".

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

Conclusion

85. We accept the evidence of Chief Superintendent Begalki and ex-Sergeant Brown. It is supported by advice we have seen in R.C.M.P. Security Service policy files concerning the undesirability of holding out prospects of permanent employment to sources, although we realize that there can be no certainty that that was always followed. We are aware that the Security Service have had some difficulty with this

question and we suspect that on occasion language has been used which would make the prospect of long-term employment appear to be at least within the realm of possibility. However, it is so improbable that such a capable and knowledgeable member of the Security Service as Mr. Begalki would make such a promise or offer as Mr. Hart alleged, that we cannot accept Mr. Hart's allegation that it was. In any event, even Mr. Hart acknowledged that a "recommendation" was spoken of. We think that Mr. Hart was allowing himself to be misled if he treated language that spoke of a recommendation as if it were a promise or offer of long-term employment.

A general comment

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

R.C.M.P.; that while in Canada for over four years he performed laudable service for the people of Canada. If he had shortcomings in regard to any of the specific matters we have discussed, those should be measured in conjunction with the value of the services he rendered.

CHAPTER 12

CHECKMATE

Introduction

1. Operation Checkmate was the codeword for a number of disruptive counter-measures taken against targetted individuals and groups in the period 1972 to 1974. It was a nationwide programme under the authority of a unit in the Counter-subversion Branch at Headquarters.

2. In this chapter we report on Operation Checkmate, the reasons for it and the specific operations. In Part V, Chapter 3, we reported on the destruction of the Checkmate files. Because of that destruction it was difficult for us to learn about the programme itself. Early in 1979, however, several of the principals who had been in the unit in Headquarters pooled their recollections and reconstituted, as best they could, the details of the operations described in this chapter.

3. Most of the hearings dealing with the background to, and the actual operations carried out under, Operation Checkmate were conducted in camera on October 2, 3, 4, 16, 17, 18, 22, 23 and on November 15 and 20, 1979, and on January 17 and April 30, 1980. Testimony was given by Mr. John Starnes (who was Director General of the Security Service), Assistant Commissioner F.V.L. Chisholm, Superintendent R. Yaworski, Mr. D.F. Maxwell (who was Deputy Minister of Justice), Sergeant I.D. Brown, and the Honourable Warren Allmand. Testimony was also given by Commissioner Maurice Nadon during a public hearing on

October 31, 1979 (Vol. 137). The in camera testimony is found in Volumes C52, C53, C54, C55, C56, C57, C58, C59, C66, C67, C75 and C92. It was released publicly in edited form in Volumes 169, 170, 171, 172, 173, 174, 175, 176 and 177. The only material not published was that which would have enabled the identity of targetted persons and organizations to be ascertained or suspected. No aspects of the operations themselves were deleted.

Summary of facts -- the general programme

4. Operation Checkmate was one of a number of programmes conceived and implemented by a unit within the Security Service called the Special Operations Group. The unit was originally created during the summer of 1970 by Superintendent Chisholm, who was Officer in Charge of D Operations, as a special ad hoc unit within D Operations, the Counter-subversion Branch of the Security Service. This ad hoc unit came to be known officially as the Special Operations Group (S.O.G.) in the latter part of 1971. Although the S.O.G. was not disbanded until early 1977, those involved recall that Operation Checkmate existed only from September 1972 to December 1973, but it is a fact that one operation did take place in 1974. Overall responsibility for the S.O.G. rested with Superintendent Chisholm until April 10, 1973, and with Superintendent G. Begalki from April 1973 until the demise of the S.O.G. in 1977. Staff Sergeant Yaworski was the senior non-commissioned officer of the S.O.G. reporting to Mr. Chisholm and Mr. Begalki from January 1972 to June 1975. Membership in the S.O.G. was restricted to only a few people.

5. As already stated, the special ad hoc unit administered some programmes apart from Operation Checkmate. The most notable of these were Operation Tent Peg (the forerunner of Checkmate from 1969 to April 1971), Operation Oddball (the forerunner of Checkmate from April 1971 to September 1972), Operation Green Light (an early undercover programme of the ad hoc unit), and Constructive Encounters (a programme designed to dissuade, by means of meaningful dialogue, dissident groups from possible confrontation with police authorities).

6. The S.O.G. was created primarily in response to what was perceived by the Security Service in the late 1960s and early 1970s as a growing threat, world-wide in scope, which had potential implications for the internal security of Canada. In our Second Report, Part III, Chapter 7, we described the origins and reasons for Operation Checkmate as follows:

> The national programme of 'disruptive' counter-measures from 1971 to 1974 under the code names ODDBALL and CHECKMATE, which is referred to in some detail later, was developed by a Special Operations Group at Headquarters. The officer in charge, who thereafter rose to a senior rank, stated in a memorandum in 1979 that
>
> (a) The use of calculated and measured security responses must be viewed in a historical perspective. Checkmate was developed and implemented as a proactive measure to contain or neutralize political violence at a time when such

violence was rapidly increasing and accumulating. The lessons of the F.L.Q. crisis had indicated both to the government and to the Security Service that reactive or passive measures were not adequate. The government invocation of the War Measures Act was a security response which it did not relish nor wish to use again. The onus to ensure this clearly fell within the mandate of the Security Service.

(b) Checkmate was a calculated and measured security response aimed at containing or preventing the occurrence of political violence. It was strictly controlled to prevent abuses, but vigorously propagated to ensure results.

(c) Many legal mechanisms in place at the time were either reactive and therefore inappropriate to intelligence needs, or were inadequate in terms of new security threats.

For these reasons he and the officers who served on the Special Operations Group consider that the counter-measures undertaken as part of this programme should be viewed against the background of the times. The reasons for the programme, as he described them in his testimony, can be summarized as follows:

(a) In the late 1960s the Security Service found itself faced by what it perceived to be an evolving threat to Canadian internal security which was different from the Communist threat which had been posed in the past. The new threat was seen as being a world-wide confrontation with authority by various groups employing violence for political ends.

(b) Violence erupted on the part of students and union members in France in 1968. Students battled police in the Federal Republic of Germany and Mexico. Mexican terrorists were recruited in Moscow and trained in North Korea. There was

violence in the Middle East, and Palestinian violence began to spread elsewhere in the world. Palestinian terrorists began to work with the Japanese Red Army and the Baader-Meinhof gang. In 1972 the J.R.A. was responsible for a massacre at Lod Airport in Israel and the Baader-Meinhof gang supported the Palestinian Liberation Organization massacre at the Olympic Games in Munich. There was growing violence in South America. In the United States there were major confrontations, including acts of violence and bombings, by such groups as the Weathermen and the Students for a Democratic Society. A strong and active black 'extremist' movement developed in the United States, including the formulation of a Black Liberation Army, which was responsible for the killing of policemen in New York City.

(c) In Canada in the late 1960s and early 1970s there were growing numbers of confrontations and bombings, kidnapping and murder. The Security Service was concerned about what it saw as a growing black 'extremist' movement which was believed to have contacts with the black 'extremist' movement in the United States. Computers at Sir George Williams University were destroyed by students in 1969. The Security Service was also perturbed by small Marxist groups which it identified as New Left groups. These groups were considered to be responsible for demonstrations in which there were confrontations with the police. Some of these groups had contacts with groups in the United States. New Left activists from abroad, such as Daniel Cohn-Bendit and Jerry Rubin, visited Canada. The Security Service had a "major concern" that the New Left groups, the black 'extremists', the F.L.Q. "and the like" might form a common front. There <u>are</u> also an organization which was involved in 39 street confrontations and other

incidents with the police, out of which arose 175 convictions. Palestinian activists visited Canada, contacted the F.L.Q., and provided guerrilla training to F.L.Q. members in the Middle East. Eight letter bombs addressed to Canada were intercepted outside Canada. The Security Service was also concerned with the Trotskyist movement which, at a World Congress in 1969, had approved the use of guerrilla warfare in South America. Canada and four other countries experienced the bombing of Yugoslav embassies and in Sweden the Yugoslav ambassador was murdered. Anti-Castro Cubans bombed Cuban mission premises in Ottawa and Montreal.

To meet some of these threats or perceived threats, Canadian police forces and the Department of National Defence were forming their own intelligence units. The police forces hoped thereby to develop evidence for the purpose of criminal prosecution. However, they found that prosecutions could rarely be launched or carried to a successful conclusion except when violent confrontation occurred on the streets. A feeling developed that, because the law could be applied only after offences were committed, the enforcement of the law was an inadequate means of effectively forestalling politically motivated acts of violence (Vol. 169, pp. 23254-5). Consequently, in 1970 the Security Service established the Special Operations Group, the purpose of which was to bring forward for the Counter-subversion Branch innovative objectives and goals on a national basis. In 1971, this group acted upon what they understood to be the Director General's wish that there be more emphasis on containment, prevention and neutralization (Vol. 169, p. 23271). When discussing ODDBALL, Inspector S.V. Chisholm, the officer in charge, told the Group that they were to create programmes of disruptive measures

where the target was of such a nature as to make such measures necessary. The limits were set first by the extent to which the operation was necessary, and second by the extent to which positive benefits could flow from the operation. There is no evidence before us of any consideration having been given to whether operations should be within the law (Vol. 169, p. 23278). In June 1972, Mr. Chisholm authorized disruptive measures, including "widespread harassment at every possible opportunity", against one Maoist group considered to be responsible for much violence. This was contemplated as consisting of the enforcement of by-laws and statutes, the execution of warrants, the initiation of deportation proceedings and the exploitation of rifts (Ex. PC-78, Tab 33). In March 1972, at a meeting of senior officers, Mr. Starnes urged that branches of the Security Service be "far more vigorous in their approach to disruptive activity" and promised his complete support for "well conceived operations". In a summary of the meeting, subsequently distributed by him, the "neutralization" of an organization or individual whose purposes were "clearly seen" to be "at cross-purposes with the maintenance of domestic stability" appeared as part of the discussion. Security Service officers in the field, said the memorandum, should not allow "reticence" to influence their work in disruptive operations, and if they failed to comply with tasks set for them by Headquarters, they "would be subject to censure, including, if necessary, transfer" (Ex. PC-78, Tab 26).

A senior member of the Special Operations Group considers that any CHECKMATE operations were proper "without any regard to whether they were ...lawful or unlawful" as long as they were "responsible", "reasoned" and "measured". In his mind, any operations

> that met those criteria were as acceptable as a peace officer's interception of the driver of a speeding or recklessly speeding vehicle. He told us that in his basic training he was taught that the law permitted reasonable response when in other circumstances the same conduct would be illegal. He equated the emergency situation -- the need to apprehend an offender who is committing an offence -- with taking measures to bring an end to circumstances which, if unchecked, could lead to "the ascendency of violence" in Canada (Vol. 173, p. 23640).

7. The Special Operations Group was thus formed to examine the current programmes and operational techniques of the entire Counter-subversion Branch with a view to suggesting new methods to help deal with these threats.

8. Operations Tent Peg, Oddball and Checkmate were merely different code names for the same operation. All three involved the use of "disruptive measures" by the members of the S.O.G. "Disruptive measures" were regarded by the Security Service as a special type of "counter-measures". "Counter measures" is defined by the Security Service as "the application of operational means to disrupt by positive action the commission of subversive acts, or acts of violence by subversive targets". "Counter measures" refers to a broad concept of containment, prevention and defusion entailing the use of a wide variety of programmes and methodologies. "Disruptive measures" were regarded as a "narrowed, measured focus of counter measures as a whole". "Disruptive measures" were designed specifically to create confusion within the ranks of target organizations by discrediting their leadership

and their programmes so as to divert their energies from activities affecting others in the community as a whole to the resolution of internal problems.

9. For the most part, the potential illegalities inherent in the Operation Checkmate activities were never taken into consideration by those responsible for the programme. Mr. Chisholm said he was concerned in a general sense about the legality of all operations carried out under the Counter-subversion Branch (particularly about the problems facing undercover agents required to perform illegal acts to prove their bona fides within target organizations). He also said that, although he would never have intentionally approved an illegal operation, he had never actually addressed his mind to the legality of any of the operations for which he had given his approval.

10. Mr. Chisholm never issued any directives to the Special Operations Group with specific instructions to work within the law. Paramount consideration was given to the most efficacious and expedient means of countering the various threats or targets. In developing its array of counter-measures, the S.O.G. was encouraged to be as creative as possible and, although not actually directed to ignore possible illegalities, was never specifically instructed to consider the legality of each operation. None of the members of the S.O.G. was legally trained. Moreover, neither Mr. Chisholm nor the S.O.G. every consulted the Legal Branch of the R.C.M.P. with respect to any of their proposed activities.

11. If he were faced with a similar set of circumstances today, Mr. Chisholm stated that he would address his mind to the possible illegalities inherent in any given operation, in part because of Mr. Dare's explicit directive in 1975 to the Security Service to operate within the law and in part because of the problems and issues which have been identified by our Commission of Inquiry.

12. Like Mr. Chisholm, Mr. Yaworski told us that he never considered the possible illegalities of any of the proposed operations sent to him for approval and never instructed his field units to consider the issue of legality. Only the "reasonableness" of each proposed operation was taken into consideration after a balance sheet analysis was done weighing the potential risks involved against the threat to be countered. The possible illegality of any activity was never a factor in any decision taken not to implement a proposed operation. Only two considerations would have affected such a decision: (a) the fear of creating repercussions for the Security Service and (b) the lasting effect of the proposed operation. Although Mr. Yaworski testified that the S.O.G. generally tried to take into account the likely reactions of those targets who were individuals, he admitted that such responses could never be entirely predictable.

13. Mr. Yaworski stated in evidence that he did not consider his attitude towards the issue of legality to have been dissimilar from that of other members of the Security Service during the period from 1972 to 1973.

14. Given the same set of circumstances today, Mr. Yaworski would not approve any of the operations under Checkmate. His reasons for this are twofold: (a) a growing appreciation that Operation Checkmate was in some ways "wrong", more from an ethical standpoint than from any sense of illegality. This reassessment in his viewpoint had its inception around December 1974 when he became aware of increasing public criticism in the United States against a comparable F.B.I. counter intelligence programme called COINTELPRO, and (b) his feeling that, although counter-measures as a whole are still valid, disruptive measures are no longer justifiable in terms of the goal of countering groups indigenous to Canada. Today, he told us, he would endorse a system within the Security Service of automatic referral of all proposed plans to the legal department.

Summary of facts and conclusions -- Individual Checkmate Operations

Operation No. 1

15. Operation No. 1, which was approved by Mr. Chisholm, was completed before Mr. Yaworski joined the S.O.G. The purpose of the operation was to expose the degree of influence and control which a foreign government and a targetted group had over a Canadian organization. The purpose was also to cause some difficulty within the movement, which was believed to be a front organization for the allegedly subversive group. To achieve this end, a member of the Security

Service contacted a news reporter to inform him that an influential member of the organization in Toronto had shifted his sympathies from one foreign government to another. The Security Service believed that the information that it was conveying about the targets sympathies was correct information.

16. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation and our general remarks about Checkmate be referred to the Attorney General of Ontario.

Conclusions

17. On the basis of the evidence before us, we do not consider that this operation included conduct that could be said to be "not authorized or provided for by law". We do not criticize Mr. Chisholm or Mr. Yaworski, for they were committing no wrong in the eyes of either the criminal or the civil law. However, in our Second Report, Part V, Chapter 7, we give our reasons for recommending that the Canadian security intelligence agency not be permitted to feed information, even if believed to be accurate, to the media.

Operation No. 2

18. Operation No. 2 was approved by both Mr. Chisholm and Mr. Yaworski. The purpose of the operation was to cause an allegedly subversive group and officials of a foreign government to doubt the loyalty of a member of the group and thereby to reduce his effectiveness within the targetted group.

19. The Security Service was administratively responsible for providing information to the Citizenship Branch of the Department of the Secretary of State on various persons applying for citizenship. By virtue of the powers granted to it by this administrative arrangement, the Security Service was under an obligation to submit to the Department a full, honest, and factual evaluation with respect to each application.

20. For several years, in response to requests for information by the Department which dealt with citizenship applications, the Security Service had recommended that an individual not be granted citizenship because he was a member of an allegedly subversive group and because of his foreign affiliations. As a result, the individual's applications for Canadian citizenship were refused.

21. Following another request by the individual for citizenship in late 1972, the Security Service in January 1973, supplied the Department with a written report dated January 22, 1973, stating that, although the individual had been involved with the targetted group from 1970 to 1972, his involvement with the group had lessened considerably, in large part due to a

dispute which he had had with officials of the group over his attempt to take control of the travel agency of which he was an employee. Although Mr. Yaworski believed that this report was an accurate reflection of the state of the individual's relationship with the subversive group, Mr. Chisholm testified that, at a subsequent meeting with Departmental officials, he misled the officials by failing to disclose that he still genuinely had grounds for objecting to the application. Indeed, Mr. Chisholm testified that he informed those at the meeting that the Security Service no longer had an objection to the granting of citizenship. The expected result was that the individual obtained his citizenship. The purpose of the deception by Mr. Chisholm was to create suspicion within the allegedly subversive group and with officials of a foreign government with respect to this sudden grant of citizenship to one of its members. It was hoped thus to neutralize the individual's future effectiveness within the allegedly subversive group. The citizenship officials were never informed by the Security Service of the latter's true motives.

22. Some confirmation of the fact that the Security Service actually continued to be concerned about the individual's activities is found in the fact that the Security Service tapped his telephone after their report was provided to the citizenship officials.

23. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney

General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario.

Conclusions

24. We have given consideration to whether the conduct of Mr. Chisholm violated provisions of section 111 of the Criminal Code, but we do not think the elements of breach of trust by a public officer are found in the evidence. The principles governing that offence were discussed by us in our Second Report, Part III, Chapter 9.

25. However, even if no offence was committed, our opinion is that his conduct was unacceptable, in failing to disclose to the citizenship officials that the advice he gave them was not genuine. We think that officials of the government are entitled to expect truthfulness and candour on the part of members of the R.C.M.P. who are charged with the function of giving information and advice.

Operation No. 3

26. Mr. Yaworski does not remember but presumes that he authorized Operation No. 3 in November 1974. Mr. Chisholm was no longer Officer in Charge of the Counter-subversion Branch.

27. The purpose of the operation was to inform an elected official of the secret ideological affiliations of an individual who had been elected in the municipal elections in the fall of 1974. In order to accomplish this, a member of the Security Service approached the

elected official and advised him that the individual was a secret member of an allegedly subversive group. Only information believed by the Security Service to be accurate was conveyed to the elected official. Mr. Yaworski believed that such exposure of a person by the Security Service was at times justified with respect to people in positions of influence in the country who were secret members of the group. In this case, Mr. Yaworski testified that he thinks that the concern was that the elected official might be placed on a committee. However, Mr. Yaworski thinks that, even if the individual had not been elected, by virtue of his occupation and the fact that he was concealing his membership in an allegedly subversive political group would have justified a Checkmate operation against him.

28. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Alberta at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Alberta. We recommend that what we have said in this Report about this operation and our general remarks about Checkmate be referred to the Attorney General of Alberta.

Conclusions

29. On the basis of the evidence before us, we do not consider that this operation included conduct that could be said to be "not authorized or provided for by law". However, this case restricted the ability of an elected public official to carry out his duties as other elected officials would. We think that the

operation was of a kind that the Canadian security intelligence agency ought not to be involved in, as we explained in our Second Report, Part V, Chapter 7.

Operation No. 4

30. Operation No. 4 was approved by Mr. Yaworski and authorized by Mr. Chisholm. It was initiated by a field unit in a Canadian city. The Security Service believed that certain influential members of a Canadian organization had concealed their affiliations with an allegedly subversive group from their colleagues. The purpose of the operation was to implant the idea among the membership of the organization, which was holding a convention, that there were members of the allegedly subversive group within their ranks.

31. A letter drafted by a Security Service member in either Ottawa or Toronto was sent to some of the organization's members with the intent of creating the impression that it had come from an individual who was a member of the allegedly subversive group responsible for matters for which the organization had been established. The letter said that there were members of the group in the organization, but Mr. Yaworski says he does not remember whether specific persons were named. One result of this operation was that a member of the organization actually left the convention and travelled to another city to talk with the apparent signatory of the letter.

Conclusions

32. The issues here are whether those who carried out this operation committed the offence of forgery (Criminal Code, section 324) or uttering a forged document (section 326). The elements of these offences are discussed in detail in Part VI, Chapter 6, in connection with the Minerve communiqué.

33. As for section 324, we think that, on the evidence before us, the letter was a "false document" within the meaning of section 282, that those involved knew that it was false, and that they intended that members of the organization should be induced, by the beliefs that the document was genuine, to do something -- namely to suspect fellow members of being secret members of the allegedly subversive group.

34. As for section 326, the same elements must be present in order that the document be regarded as a "forged document", except that, to sustain a charge of uttering, the Crown need not prove the intent with which the document was forged: R v. Keshane.[1] We think, therefore that a case could be made out that this offence was committed.

35. Witnesses did not recall which members of the R.C.M.P. executed this operation. We know only that it was approved by Mr. Yaworski and authorized by Mr. Chisholm. They may therefore have been parties to such offences.

36. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Alberta at the request of the

Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Alberta. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Alberta, even though, on May 1, 1981, he announced that criminal charges would not be laid in connection with this matter.[2]

37. Quite apart from the question of possible offences, we think that this conduct was unacceptable because the result was improper interference in the affairs of a legitimate organization. In our Second Report we have given our reasons for recommending that this kind of counter-measure not be permitted on the part of Canada's security intelligence agency.

Operation No. 5

38. Operation No. 5 was approved by Mr. Yaworski and authorized by Mr. Chisholm. It evolved jointly between the S.O.G. at Headquarters and a field unit. The target of the operation was the leader of an allegedly subversive political party whom the Security Service suspected had been funded for several years, on a large scale, from foreign sources. It had been reported variously that the individual was probably being financed by various foreign sources. The Security Service could not account for the level of income that supported his wide travels, various activities in connection with the leadership of the allegedly subversive group, and his life style. The purpose of the operation was to disrupt the individual by exposing him to an income tax investigation (and to

the possible expense of obtaining legal or accounting assistance) and thereby to acquire information with respect to the financing of the allegedly subversive group which would be revealed during the course of a tax investigation.

39. The Security Service learned that the individual had not filed an income tax return since coming to Canada although Mr. Chisholm had no recollection of the manner in which the Security Service had acquired this information. For example, he did not know whether a source within the Department of National Revenue had provided this information.

40. A member of the Security Service prepared and filed two false income tax returns -- one purporting to be on behalf of the individual himself and one purporting to be on behalf of his company. Mr. Yaworski does not know who prepared and signed the return.

41. After the filing of the false returns, it was anticipated that the consequent investigation and possible prosecution of the individual for tax evasion would disclose the sought-after financial information. Mr. Chisholm did not expect to receive financial information from any particular source within the Department of National Revenue. He did, however, expect to acquire information from sources outside of the Department as to the manner in which the anticipated tax investigation was proceeding.

42. The Security Service became aware, through one of its sources, that the Department of National Revenue did conduct a tax investigation of the individual and that the Department was communicating

with his lawyer. No court action, however, was ever instituted against the individual nor did the Security Service ever enquire of the Department of National Revenue about the results of its investigation.

43. Mr. Yaworski testified that he did not discuss the legality of the operation with Mr. Chisholm, and that, as far as he was concerned, its legality or illegality was of no consequence. The operation, he told us, seemed to him to offer some prospect of carrying out what he saw as a responsibility "without causing anyone any physical harm or ... any difficulty", and it seemed to him to be a reasonable way to pursue the objective.

44. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario and the Minister of National Revenue of Canada.

Conclusions

45. The issues here again are whether those who carried out this operation committed the offences of forgery and uttering a forged document. We believe, on the evidence before us, that the elements of those offences exist.

46. We do not know which members of the R.C.M.P. executed this operation. We know only that it was approved by Mr. Yaworski and authorized by Mr. Chisholm. They may therefore have been parties to such offences.

47. As stated earlier, this matter has already been disclosed to the Attorney General of Ontario. He should also be given the content of our discussion of those offences, as set forth in the chapter on the Minerve Communiqué, Part VI, Chapter 6, and on Operation No. 4.

48. Apart from whether offences are committed, we do not hesitate to express our opinion that it is unacceptable and wrong for members of the R.C.M.P. to mislead another department of the Government of Canada as was done here, or to cause personal expense and bother to the individual, no matter what the security intelligence agency thinks of his activities.

Operation No. 6

49. Operation No. 6 was initiated by a field unit approved by Mr. Yaworski and authorized by Mr. Chisholm. The target of the operation was the leader of an allegedly subversive political party. The purpose of this operation was to create the impression within the revolutionary milieu in a Canadian city that a foreign intelligence agency was directing the activities of the individual, and thus to cause consternation within the political party with respect to the loyalty of its leader.

50. A letter was drafted by a member of the Security Service and then placed in the mail, addressed to a fictitious name at a foreign location. There, it was subsequently retrieved by another member of the Security Service, who was using the name of the fictitious person to whom the letter had been addressed. The letter gave a factual account of the individual's recent activities and was signed with the initial of one of the individuals names. Although no direct reference was made in the letter to the fact that the individual was a member of, or was reporting to, a foreign intelligence agency, the letter was drafted in such a way as to imply that the individual was reporting to a contact in the foreign country.

51. The letter was then introduced by a Security Service member into the revolutionary milieu by sending it to a counter-culture publication with a message suggesting that the letter referred to the individual, that it raised interesting suggestions as to his reporting relationship to someone in the foreign country, and that the newspaper might wish to publish it. The newspaper did not publish the letter, but as a result of efforts by the newspaper's staff to determine whether the letter was authentic, some people came to believe that the individual was in fact an agent of the foreign intelligence agency. That was the intended result of the operation. A secondary purpose was to enable members of the Security Service to interview various people under the pretext that the individual's conduct represented foreign intervention in Canadian affairs.

52. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario and the Attorney General of British Columbia at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario and the Attorney General of British Columbia. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario and the Attorney General of British Columbia.

Conclusions

53. Here again the issues are whether those who carried out this operation committed the offence of forgery or uttering a forged document. We think that on the evidence before us the elements of those offences exist.

54. We do not know which members of the R.C.M.P. executed this operation. We know only that it was approved by Mr. Yaworski and authorized by Mr. Chisholm. They may therefore have been parties to such offences.

55. This matter has already been disclosed to the Attorney General of British Columbia. Nevertheless, we recommend that what we have said in this Report about this operation and about Checkmate generally should be communicated to the Attorney General of British Columbia. He should also be given the content of our discussion of those offences, as set forth in the chapter on the Minerve Communiqué, Part VI, Chapter 6, and on Operation No. 4.

56. Quite apart from the question of possible offences, in our opinion this conduct was unacceptable because it was improper interference with the affairs of a person legitimately in Canada. In our Second Report we have given our reasons for recommending that this kind of counter-measures not be permitted on the part of Canada's security intelligence agency.

Operation No. 7

57. Operation No. 7 was approved by Mr. Yaworski and authorized by Mr. Chisholm. It was initiated by the S.O.G. at Headquarters in Ottawa. The purpose was to cause disruption and dissension within a targetted group in a Canadian city.

58. The Security Service believed that another allegedly subversive group and the targetted group were similar in their goals. There had been discussions among some members of the two groups about the possibility of merger, but other members opposed such a step. The Security Service attempted to exploit the dissension among the membership in both parties.

59. A Security Service source, who was leaving the membership of the targetted group for personal reasons, was persuaded by the Security Service to criticize the leader openly before leaving it. As a result, some consternation and upheaval was created within the ranks of the group, as had been intended by the Security Service.

Conclusions

60. On the basis of the evidence before us, we do not consider that this operation included conduct that could be said to be "not authorized or provided for by law". However, in our Second Report, Part V, Chapter 6, we observed that in the future it should be regarded as unacceptable for Canada's security intelligence organization to use an informant in a domestic political organization primarily to break up the organization.

Operation No. 8

(paragraphes 61 to 69)

Operation No. 9

70. Operation No. 9 was approved by Mr. Yaworski and authorized by Mr. Chisholm and was initiated in a field unit. The target was an allegedly subversive group. The Security Service was aware that, because of the difficulty in finding other meeting places, the group had been renting a premises under the disguise of a study group. The purpose of this operation was to try to force the group to move to another location where the Security Service could obtain better coverage and intelligence of the organization's activities.

71. A relative or friend of a member of the Security Service, who was also a member of the organization owning the premises, made a phone call to the head of the organization in which he expressed indignation over the fact that premises had been rented to a group which was in fact an allegedly subversive group, whose aims, the caller said, included the use of violence to achieve its political ends. The head of the organization then phoned the R.C.M.P. himself to confirm the accuracy of this accusation. The Security Service then showed the caller copies of the group's newspaper and thus persuaded him as to the true character of the people who had rented the premises. As a result, the head of the organization refused to allow the group to meet any further on the premises.

72. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario.

Conclusions

73. We doubt that there was any wrong committed in the eyes of the criminal or the civil law. Nevertheless we are concerned that such conduct risks infringement in a practical sense of the right of

Canadians to freedom of assembly and association. By this we mean that if, for whatever reason, a group regarded as subversive is forced to move from place to place because an agency of the state harasses it, even lawfully, that restricts in an unacceptable fashion the freedom of assembly which is protected by the Canadian Bill of Rights.

Operation No. 10

74. Operation No. 10 was approved by Mr. Yaworski and authorized by Mr. Chisholm. The purpose of the operation was to try to glean as much information as possible concerning the activities of the target who was regarded by the Security Service as a leading extremist.

75. The Security Service knew that the individual was planning to meet in a Canadian city with a leading foreign revolutionary. The Security Service was also aware that the individual used his own car for short trips and a source's car for longer trips. One night, while the target's car was parked on the street, a Security Service member added a chemical to its gas tank to prevent the car from starting. The intention was to try to force the target to use the source's car which the source would be driving and in which electronic listening devices would be installed. However, the chemical did not have the intended effect and the car started.

76. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario.

Conclusions

77. Here the issue is whether in trying, albeit unsuccessfully, to immobilize the target's car, there was an offence committed. The offence would be attempting to commit the offence of mischief. Mischief is an offence under section 387, the relevant parts of which are as follows:

> (1) Every one commits mischief who wilfully
>
> . . .
>
> (a) renders property...useless, inoperative or ineffective,
>
> (b) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or
>
> (c) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.
>
> (4) Every one who commits mischief in relation to private property is guilty of
>
> (a) an indictable offence and is liable to imprisonment for five years, or
>
> (b) an offence punishable on summary conviction.

On the evidence before us, it appears that an unknown member of the R.C.M.P. committed an offence in that he did the act with the intent to commit the offence of mischief by rendering the automobile inoperative. Such an attempt is an offence under section 24(1) of the Criminal Code. It is arguable also that Mr. Yaworski and Mr. Chisholm, who respectively approved and authorized the operation, were parties to the offence.

78. This matter has already been disclosed to the Attorney General of Ontario. Nevertheless, we recommend that what we have said in this Report about this operation should be communicated to the Attorney General of Ontario.

79. Quite apart from possible offences, we unhesitatingly express our opinion that such conduct was wrong and unacceptable.

Operation No. 11

80. Operation No. 11 was approved by Mr. Yaworski and authorized by Mr. Chisholm. It was a plan jointly evolved between the S.O.G. at Headquarters in Ottawa and a field unit. The purpose of the operation was to try to discredit a target, who was believed to be the leader of an extremist group in Canada.

81. The Security Service was aware that an individual was a previous supporter of the target. The individual had become disillusioned with the target because of the target's misappropriation of funds of an

organization and the individual had threatened to expose the target. Mr. Yaworski said that the instructions given by the Security Service to the source were that the source was to leave with the individual "the clear inference that if the individual did not discontinue criticisms of the target...the individual may have cause to fear for the individual's safety", i.e. "the individual might very well expect harm might be done to the individual". Mr. Yaworski says he does not know what words were used in fact, but that he authorized calls to be made according to that tenor. Mr. Chisholm testified that he intended that threats be made to the individual's welfare. At the time that testimony was received, objection was taken by R.C.M.P. counsel to Mr. Yaworski's revealing to us the name of the source. Later, when a witness testified on other matters, we learned that it was the witness who was the source in question, and we heard the witnesses' testimony and that of his handler, Sergeant I.D. Brown, concerning this matter. They testified that the witness did not threaten the individual directly. Sergeant Brown testified that, taking the opportunity to exploit this defection, he instructed the witness to make a phone call to the individual in which the witness was to identify himself and in which he was to inform the individual of certain threats which were known to have been made on the individual's life by two friends of the target. According to Mr. Brown, these were real threats of which the individual had no prior knowledge. The witness testified that he was instructed to make threats on the individual's life to other members in the community in contemplation that such threats would

ultimately be conveyed to the individual by word of mouth. The witness did not intend to carry out the threats he made in the community, but he intended that the individual be sufficiently frightened, when the individual heard of them, that the individual would seek protection from members of the Security Service and disclose information to them. According to Mr. Brown, two members of the Security Service then approached the individual and offered assistance. The individual accepted the offer and, after a debriefing session with a member of the Security Service, the individual was given an airline ticket to a foreign country. The individual returned to a foreign country and subsequently published an article there denouncing the target.

82. Mr. Yaworski testified that he could not conceive of any harm that would be done to the individual by this operation unless it was the reason for the individual's decision to return to the foreign country, and the individual would not otherwise have reached that decision.

83. Mr. Brown testified that he believed that his immediate superior, although not cognizant of the details, probably knew about the general plans for this operation.

84. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the

Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario.

Conclusions

85. If the evidence of the witness is accepted, then he did not commit an offence under section 331 of the Criminal Code, but if he did threaten the individual over the telephone he did commit an offence. However, there is no evidence that he did so threaten the individual, other than the testimony of Mr. Yaworski concerning his intention, and Mr. Yaworski cannot know whether this intention was carried out by the handlers in giving instructions to the source. Section 331 provides as follows:

> (1) Every one commits an offence who by letter, telegram, telephone, cable, radio, or otherwise, knowingly utters, conveys or causes any person to receive a threat
>
> (a) to cause death or injury to any person...
>
> (2) Every one who commits an offence under paragraph (1)(a) is guilty of an indictable offence and is liable to imprisonment for ten years.

It has been held that an oral threat made directly or face to face is not an offence within this section: R v. Nabis.[3] In that case, the court left open whether an offence is committed if a threat is made by a messenger of other intermediary means.[4]

86. Even if no offence was committed, we consider that it was objectionable in the extreme for a person to be led by the Security Service to believe that threats were being made to his or her personal well-being. Mr. Yaworski intended that such threats be made, and that is rendered no less objectionable by his having no intent that the threats be carried out. If the witness is believed, he made threats with the expectation that they would reach the individual's ears (and he knew that he was regarded as a tough person), and he did so upon the instructions of Sergeant Brown. However, Sergeant Brown says that he instructed the witness to tell the individual about real threats that other persons had made. Whether events transpired as recalled by the witness or as recalled by Mr. Brown, we think that it is unacceptable that Sergeant Brown did what he did.

Operation No. 12

(paragraphs 87 to 92)

Operation No. 13

93. Operation No. 13 was approved by Mr. Yaworski and authorized by Mr. Chisholm. It evolved jointly between Headquarters and a field unit. The purpose was to try to discredit Mr. John Riddell, leader of the League for Socialist Action (L.S.A.), a Trotskyist organization in Canada. The Security Service hoped to exploit existing conflict within the movement caused by a dispute over leadership between Mr. Riddell and the former leader, Mr. Ross Dowson.

94. Acting upon an idea conceived by Mr. Yaworski and members of the Security Service in Toronto, anonymous letters were drafted in Ottawa. These implied that Mr. Riddell was suffering from emotional problems and had been treated by a psychiatrist, and generally denigrated his leadership abilities. These letters were sent to Mr. Riddell himself, his wife and members of the organization who were meeting at King Edward School in Toronto. Other similar letters were drafted in Montreal in French and sent to members of the organization in Quebec. Although drafted ananymously, the letters were intended to create the impression that they had been written by someone within the Trotskyist movement. Some of these letters are quoted in the Report of the Ontario Commission of Inquiry into the Confidentiality of Health Information, 1980, at pages 40-45. Other letters, which were sent later to Mrs. Riddell while she was attending a convention in Brussels, suggested that she return immediately to Canada in order to help her ailing husband.

95. Mr. Yaworski disavowed any knowledge of certain alleged phone calls which Mrs. Riddell has testified (before the Ontario Commission) were made to her in Toronto while her husband was out of the country in the spring of 1973.

96. Mr. Chisholm admitted that, in distributing the series of letters to Mr. Riddell, his wife and various individuals in the L.S.A., the S.O.G. did not consider the possible ill effect that this type of action could have on the state of physical or mental health of either Mr. Riddell or his wife.

97. The circumstances of this case were disclosed in 1980 by the Solicitor General of Canada to the Attorney General of Ontario at the request of the Solicitor General of Canada. Subsequently in 1980, we showed the unedited in camera transcripts relating to this operation to representatives of the Attorney General of Ontario. We recommend that what we have said in this Report about this operation be referred to the Attorney General of Ontario.

Conclusions

98. The issues raised by the evidence of this operation are whether any offence was committed under section 330(1) ("false messages") or 262 (defamatory libel) of the Criminal Code. They provide as follows:

> 330. (1) Every one who, with intent to injure or alarm any person, conveys or causes or procures to be conveyed by letter, telegram, telephone, cable, radio, or otherwise, information that he knows is false is guilty of an indictable offence and is liable to imprisonment for two years.
>
> 262. (1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.
>
> 264. Every one who publishes a defamatory libel that he knows is false is guilty of an indictable offence and is liable to imprisonment for five years.
>
> 265. Every one who publishes a defamatory libel is guilty of an indictable offence and is liable to imprisonment for two years.

99. The evidence before us as to the letter that was sent to Mrs. Riddell abroad, which said that her husband was ailing, discloses that the letter was clearly sent with intent to alarm her and was known to be false. There is, therefore, an apparent offence under section 330(1).

100. As for defamatory libel, the issue is whether the letter circulated by the Security Service at the meeting in December 1972 was within section 262(1). The letter, as quoted in the Report of the Ontario Commission of Inquiry into the Confidentiality of Health Information, Vol. II at pages 44-5, stated that Mr. Riddell

> is suffering from extreme emotional anxiety and instability.

Unless it can be shown that at the time that statement was true, it could be open to a trier of fact to find that that statement was likely to injure the reputation of Mr. Riddell by exposing him to contempt or ridicule, or to insult Mr. Riddell.

101. This matter has been referred to the Attorney General of Ontario. Nevertheless, we recommend that what we have said concerning this operation should be communicated to him.

102. Even if no offence was committed, we regard the conduct of Mr. Chisholm and Mr. Yaworski as wrong and unacceptable, particularly the letter written to Mrs. Riddell, which was designed to alarm her.

Operation No. 14

103. Operation No. 14, although jointly evolved between the S.O.G. at Headquarters and a field unit was not a Checkmate operation, but was part of the Green Light programme (an undercover operation). The target of this operation was an allegedly subversive group in a Canadian city. The group was regarded by Mr. Yaworski both as violence-prone and as an international extremist organization.

104. The Security Service had provided one of their undercover agents, who was a member of the group and who was active in the same movement in a foreign country, with false identification and documentation in order to create a legend for him. The undercover agent became concerned about maintaining his cover when he learned that the group intended to bomb premises in a Canadian city. At that point, the Security Service decided to launch an operation to try to neutralize the organization and yet maintain the agent's cover. Shortly thereafter, acting upon information provided by the Security Service, the city police raided the group's premises, found weapons there, and arrested the members of the group and charged them with illegal possession of weapons.

105. Mr. Yaworski testified that the undercover agent had not deliberately engineered the members of the group to be in a particular place at a particular time in possession of their weapons. This was

confirmed by our own examination of what was reported at the time on the Headquarters file, but of course we have no way of verifying the accuracy of that report. The report stated that the undercover agent had observed the weapons in the room where they were kept.

106. As far as we are aware, the Solicitor General has not reported this matter to provincial authorities.

Conclusions

107. On the basis of the evidence before us, we do not consider that this operation included conduct that could be said to be "not authorized or provided for by law".

Operation No. 15

108. This operation is one which Mr. Chisholm recalls as having been carefully planned by the S.O.G. but not carried out. The initiative for this plan came from members of a Security Service field unit, was authorized by Mr. Chisholm and, according to him, was discussed with both the Deputy Director General, Assistant Commissioner Draper, and with the Director General, Mr. Starnes (although Mr. Starnes denies any knowledge of it).

109. It was proposed that a member of the Security Service grab a file box from a member of an allegedly subversive group when the member was on his way home from the office. The purpose of the proposed operation

was to gain access to the contents of the file box, which was thought to comprise a written record of most of the activities of the group. It was the intention not to return the box.

110. Mr. Chisholm cited four reasons for the decision not to implement the proposed plan against the targetted group: (a) the risk of physical harm to the targetted individual; (b) the opposition of the Area Commander to the plan; (c) the availability of an alternate legal method in the form of a search warrant, and (d) that a special unit with the Criminal Investigation Branch of the R.C.M.P. was already involved in investigating the allegedly subversive group for sedition.

Conclusions

111. This operation was not carried out, and it does not appear to have reached the step of which an agreement had been reached to do an unlawful act. Hence there was no conspiracy that would be recognized by the law. If the plan had been carried out, it would have been illegal, objectionable and wrong.

References to Part VI, Chapter 12

1 (1974) 20 C.C.C. (2d) 542, 27 C.R.N.S. 331 (Sask. C.A.)

2 Montreal Gazette, May 2, 1981

3 (1974) 18 C.C.C. (2d) 144

4 The British Columbia Court of Appeal, in R. v. Wallace (1970) 1 C.C.C. (2d) 42, held that there is an offence only when a "means of communication" is used. The judgement does not discuss whether the means may be by an intermediary. In R. v. DiLorenzo (1972) 6 C.C.C. (2d) 30, Mr. Justice Keith of the High Court of Ontario held that it could. The Manitoba Court of Appeal, in Re R. v. Basaraba (1975) 24 C.C.C. (2d) 296, found it unnecessary to decide the point.