SUBMISSIONS TO - Commission of Inquiry

Concerning

Certain Activities of the

Royal Canadian Mounted Police

RE - Priorities and Procedures

For

the Commission's Proceedings

FROM - Canadian Civil Liberties Association

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INTRODUCTION

The Canadian Civil Liberties Association is a national organization with more than 4000 individual members, 9 affiliated chapters across the country, and some 40 associated group members which, themselves, represent several thousands of people. A wide variety of persons and occupations are represented in the ranks of our national membership - lawyers, academics, housewives, trade unionists, journalists, media performers, minority group leaders, etc.

Among the objectives which inspire the activities of our organization is the quest for legal safeguards against the unreasonable invasion by public authority of the freedom and dignity of the individual. It is not difficult to appreciate the relationship between this objective and the Commission's terms of reference. In a number of important ways, the security service of the RCMP has been accused of encroaching upon fundamental freedoms of the individual.

But what makes these encroachments even more serious, from our point of view, is the allegation that they were unlawful. Democratic institutions cannot long survive a pattern of police law-breaking. Nor can they withstand the one other element which threatens to transform this situation into a crisis of major proportions. We refer here to certain Government rationalizations on behalf of the security service. In a number of statements, Government spokesmen have suggested that some of the alleged misconduct may have been necessary in the interests of national security. Such statements erode public respect for the rule of law. In a viable democracy, neither the police nor the Government can arrogate to themselves the effective right to exceed the limits which Parliament has imposed upon them.

Of course, these Government spokesmen have also acknowledged the general duty to obey the law. But when they do that, they frequently call for amendments so as to clothe the police henceforth with the powers they may have lacked hitherto. Underlying these statements is the unverified assumption that the national security really does require the powers which are claimed. While the Canadian Civil Liberties Association shares with all responsible citizens the desire to

protect the genuine national security needs of thi country, we urge nevertheless a response of skeptical scrutiny to the current de ands for increased police power. The lessons of history demonstrate the ease with which national security has been invoked improperly to curtail personal liberty. Sometimes such invocation has served the interests of self-seeking despots; sometimes it has merely concealed the misjudgments of well-meaning zealots. Whatever the motives, the results have often meant a needless loss of liberty.

In view of the stakes involved, the Canadian Civil Liberties Association appreciates the importance of the tasks before this Royal Commission. We hope, therefore, that we will be able to contribute to your deliberations, both today and hereafter.

A word about the ensuing submissions. Apart from those matters relating to the pace and conduct of the Commission, most of the brief avoids conclusive recommendations. Since so little of the evidence has been heard, there is not yet enough of a record upon which to base such an approach. In consequence, rather than recommend answers, we prefer here to identify questions. At this early stage in the inquiry, our main object has been to indicate a number of possible directions for the proceedings to follow.

THE SCOPE
OF
POLICE POWERS

Many of the revelations and allegations of RCMP law-breaking have been accompanied by statements from Government spokesmen to the effect that the police in this country need more power. No responsible person can deny the possibility that circumstances may arise requiring an adjustment in the current level of police powers. Doctrinaire postures have no place in sensible discourse. But, although he avoids dogma, the democrat will nevertheless be wary. He realizes that every additional police power can curtail the amount of civilian freedom. He will insist, therefore, that the proponents of such additional powers be burdened with the onus of demonstrating their necessity.

Thus far, neither the Government nor the police have made a substantial attempt to discharge this onus. To be sure, there have been many declarations of the need for more police powers. But a declaration is not the equivalent of demonstration. At some point, it is necessary to go from faith to facts in the effort to make the case.

No doubt, this Royal Commission will become a forum for the evaluation of the arguments on this subject. In addition to requiring the proponents to meet the above onus, the Commission should observe further cautions. Many of the Government's statements hitherto have conveyed the notion that the essential problem in all these revelations lies not with the law-breakers but with some alleged defect in the law itself. The impression is thus created that what the delinquent police officer did was necessary; even if his act was illegal, he can be excused because the law should have provided for it. It is not difficult to appreciate the dangerous implications which are involved in these notions. The concept of such permissible law-breaking can create pressures toward anarchy. If this kind of law-breaking can be excused in deference to these stated interests, why not the law-breaking in other constituencies on the basis of <u>their</u> perceived priorities? Any attempt to distinguish between this kind of law-breaking by the police and that which may be committed by other constituencies will incur another unpalatable risk - that this society accepts the propriety of double standards.

In order to forestall the further development of these notions, the Commission should do everything possible to accelerate the proceedings against those who have broken the existing law. This means that the priority business on the agenda should be the elicitation of evidence concerning the impugned misconduct. The speedy uncovering of the relevant evidence could encourage the speedy initiation of the requisite action. Indeed, as we indicate later, there is no reason why, in number of these cases, the appropriate authorities could not launch the requisite proceedings even before the Commission probes have been completed. Until the processes of law are brought to bear in these cases, there is a very real danger of undermining public confidence in the administration of justice. While the cases at issue are left unresolved, why should anyone trust that amended laws would be enforced more conscientiously than the existing ones?

The second caution which we would draw to your attention is the inadequacy of a one-dimensional analysis. In addition to the chorus of demands to increase police powers, there are also some valid arguments to reduce them. Indeed, in a number of areas, the powers of the police might already be said to exceed the bounds of necessity. Without now resolving these issues, it is appropriate to ask the Commission to conduct as comprehensive an examination as possible into all aspects of the problem. Since the object of the exercise is the quest for reasonable balance, it would be unwise to neglect the arguments on the other side of the coin.

In this regard, it might be useful to identify some of the current police powers which create this concern.

In our view, such an argument might be made about the power of electronic surveillance under the Official Secrets Act. In order to appreciate our comments here, it would be helpful to consider the dragnet impact of the technology. With virtually every electronic bug, there are many more innocent people whose conversations are monitored

than there are guilty and suspected people. By now, for example, some 1500 people have been convicted in U.S. cases where electronic surveillance had been used during 1969 and 1970. But in the course of this surveillance, American police overheard 40,000 people in more than a half a million conversations. Unquestionably, the overwhelming number of these people was innocent of wrongdoing. But electronic bugs cannot discriminate; they catch everyone within their range - the guilty, the suspected, and the innocent alike.

Is it appropriate, therefore, that the Official Secrets Act empowers a politician, the Solicitor General, to authorize such pervasive intrusions on people's privacy? Why should court approval be necessary to wiretap for ordinary criminal cases but not in security matters? Even if the Solicitors General of this country have performed these duties with impeccable judgment, there is too great a risk that they will not be perceived that way. As politicians, they will frequently be perceived as having acted out of political rather than security considerations. And is it appropriate that there are no time limits whatsoever on the duration of electronic surveillance operations under the Official Secrets Act?

There are certain other types of police surveillance which hitherto have raised few problems concerning their legality but many problems about their propriety. Such activity might include the use of stake-outs, bribery, informers, infiltrators, etc. By themselves, the gathering of information and the compiling of dossiers on people by the use of such methods are not likely to be considered illegal. Yet the knowledge that the police are engaged in this activity and the suspicion as to who might be the targets of it can have a chilling impact on the exercise of democratic dissent. Many members of the New Democratic Party and its former Waffle faction, for example, have expressed considerable uneasiness about the surveillance which has supposedly been conducted against some of their leaders. Similar sentiments have been expressed concerning the reports of such activities against the leadership of CUPE and the National Farmers Union. Moreover, material which the RCMP has collected on certain Government employees was allegedly used as the basis for blacklisting some of them from key civil service positions.

In view of the implications of such surveillance for democratic dissent and procedural fairness, there ought to be an assessment of the objects and methods involved. How far should such activity be permissible? Is there an argument for the adoption of some kind of control and restraint mechanisms? Who should decide and, on the basis of what criteria, what people should be investigated, what methods might be used, and what use might be made of the resulting information? To what extent should there be a right to inspect and correct the consequent police files? Are the remedies in the Human Rights Act sufficient for such purposes? Should there be a point at which dossiers must be destroyed? And what kinds of measures might be adopted to ensure compliance?

Another area of possible excess of power in the RCMP concerns the controversial writs of assistance. On the authority of a number of Federal statutes, certain officers of the RCMP are granted writs of assistance which empower them forcibly to enter dwelling houses and conduct searches and seizures on the basis of their own reasonable belief that they will find the evidence of certain kinds of offences. Unlike the case with most criminal matters, there is no need to seek the permission of an independent judge or justice before they undertake their contemplated intrusions. Canada may be one of the few common law countries which has preserved this extraordinary power. To what extent does it remain necessary? Is there any reason, for example, why the hunt for illicit marijuana should give the police more power to encroach upon domestic privacy than the search for the evidence of a robbery or even of a murder?

No Commission assessment of police powers would be sufficient, unless it included the case for reduction as well as enlargement.

There is not much point in going through the delicate exercise of attempting to achieve a reasonable balance of police powers unless the public can be satisfied that the police will be effectively contained within those allotted powers. We believe, therefore, that an important function for this Royal Commission involves the examination of the safeguards which are currently and potentially available to restrain excesses of police power. To what extent are the current safeguards operationally effective? What, if any, improvements can be made?

At the moment, offending police officers are subject to criminal prosecutions, civil lawsuits, and departmental discipline. Unfortunately, these sanctions are beset by a number of problems.

Criminal prosecutions are handled usually by the same government department (Attorney General) which is involved in daily cooperation and association with the police. Because of this, there is reason to fear that prosecutions of police will not be as vigorously pursued as prosecutions by police. And, when the accused is a police officer, it is not expected that fellow officers would perform the kind of conscientious investigation that characterizes their other work. A fortiori, this would be true in a case where the victim of the police misconduct was a member of a minority political sect which was generally in conflict with the mainstream values of society. As an example of this phenomenon, consider the prosecution of the police officers who were involved in the break-in at L'Agence de Presse Libre. The prosecutor chose to proceed on the less serious of the available charges and, at an in camera court session, he apparently joined with the defence in requesting leniency. Even if in the circumstances the prosecutor acted properly, large sectors of the public are bound to be suspicious. Few people can know what went on behind the closed doors of the courtroom but most people will know of the harmony of interest between the impugned police officials and the prosecutor's office.

Nor do civil court actions for damages appear as a very satisfactory avenue. Civil litigation is expensive, time consuming, and emotionally taxing. Negotiations for settlement, examinations for discovery, innumerable motions, trials, and appeals

could take years to produce results. Very few people have the resources to investigate the facts, engage counsel, withstand pressure by the police, and handle the many expenses which are so often involved.

While disciplinary complaints may be processed more expeditiously, the concern is that they will be handled less impartially. Since a finding of impropriety against a police officer could affect prejudicially the public relations of the entire Force, such procedures are vulnerable to the suspicion of "cover-up".

A factor common to all these sanctions is the need for an initiative to be taken by the complainant or the police. For the reasons already indicated, police cannot be expected to initiate sufficient actions against police. And, for reasons already alluded to, such initiatives are not likely to be forthcoming from many complainants. As indicated, most of the grievances against the police will arise from amongst the least accepted sectors of society - minorities, suspects, disadvantaged, the politically unpopular, etc. Even if their complaints were meritorious, such people rarely would have the confidence to challenge the police. Indeed, surveys conducted by the Canadian Civil Liberties Association among such aggrieved people revealed that more than 85% refused to take subsequent retaliatory action. When asked about their reluctance, most of the grievors replied flatly, "it would do no good". It would be helpful, therefore, to consider the introduction of additional safeguards which might deal more effectively with this reluctance to take initiative.

One possible measure might be the adoption of an exclusionary rule which would deny to the police the use in court of any evidence which they acquired unlawfully. At least in those cases where their misconduct culminated in the prosecution of their suspect, the resulting sanction would be clear and conspicuous. The illegality of the methods involved would preclude the court room use of the evidence obtained. Such a sanction would require no special initiatives from other police officers or from the aggrieved party. Defence counsel could simply challenge the admission of any evidence which resulted from the questionable activities of the police. This would force an inquiry at the trial into the legality of the police tactics. Quite

possibly, the mere knowledge that evidence so obtained could not subsequently be used, would act also as some deterent, in the first place, against the contemplated misconduct.

Admittedly, this is one of the most controversial concepts in the criminal law. Some people question whether the exclusionary rule really does deter police abuse. Moreover, opponents of the rule think it's wrong to allow a guilty civilian to go free just because a police officer has also transgressed. If they have both broken the law, they should both be punished. On the other hand, supporters of the exclusionary rule point to the foregoing inadequacies in the alternate sanctions. As a practical matter, without such a rule, there is too great a risk that nothing will be done about police abuse. The one thing that the law cannot afford is an appearance of tolerance or indifference about such practices. In our view, the Commission should probe these matters thoroughly in an attempt to determine whether a broader exclusionary rule in Canada would represent an effective and worthwhile safeguard against police misconduct.

There is a better chance that more victims of police abuse would come forward if some provision were made for a publicly subsidized independent investigation of their grievances. In view of the fact that the only capacity for subsidized investigation is currently internal to the Force, it would be hard to expect any significant public confidence in the procedure. In this regard, we note the proposal of the Marin Commission of Inquiry and its apparent acceptance by the Federal Solicitor General. It may be, however, that this proposal for a federal police ombudsman may not go far enough in meeting the problem for which it has been designed. According to the plan, an independent ombudsman will be available to review the investigation of complaints but the investigations, themselves, will be conducted by members of the Force. To what extent is there a danger that the prospect of an in-house investigation will continue to deter potential complainants from coming forward? For some documentation of our concerns here, we are providing the Commission with copies of the submissions which were made by the Canadian Civil Liberties Association to the Marin Commission. You will note on page 2 some extracts from the affidavits of native people who refused to cooperate with RCMP officers investigating their complaints.

In our view, this Commission should consider the possibility of equipping the federal police ombudsman with a separate investigatory staff. Some commentators have argued that a completely external operation would evoke greater resistance from the membership of the RCMP. To what extent is this likely to be true? Moreover, how far might such a risk be otherwise preventible and, in any event, worth the advantage of greater public and complainant confidence in the process?

Among the most important safeguards against police abuse is the existence of civilian control and accountability. In a democratic society, the police are not supposed to be an entity in themselves. At some stage they are answerable to the Government and Parliament which, in turn, are accountable to the entire electorate. In view of the importance of this principle and the conflicting notions about it which have appeared recently in the public arena, we have decided to treat this matter separately from the other safeguards.

THE EXERCISE
OF
CIVILIAN CONTROL

In our Parliamentary democracy, civilian control of the police is supposed to be achieved through the exercise of Ministerial responsibility. According to the RCMP Act, for example, the management of the Force is legally subject to "the direction of the Minister".

Notwithstanding the theoretical principle and the statutory arrangements, the Prime Minister, on a number of recent occasions, has said that he does not want to know and, indeed, he should not know the day to day operations of the police. In his view, the Minister should be responsible only for the policy guidelines but not for the daily operations. At his press conference of December 9, 1977, for example, Mr. Trudeau was quoted as follows.

> "...it is not a matter of pleading ignorance as an excuse. It is a matter of stating, as a principle, that the particular Minister of the day should not have a right to know what the police are doing constantly in their investigative practices..."

At some point during the Inquiry, the Commission should examine the implications of this emerging notion of Ministerial responsibility. Is Governmental ignorance of these matters as desirable as has been suggested? As a practical matter, how can the Minister ensure that the police are observing the policy guidelines unless he knows something of their day to day operations? Is it necessary to choose between the Minister knowing everything or nothing of the relevant operations?

In the absence of greater Ministerial control, what practical protections would there be against police law-breaking? The Prime Minister has said that an aggrieved citizen can always seek redress in the courts. But is that a sufficient remedy? In our society the private citizen is not supposed to carry the burden of protecting himself from criminal acts. Although he is entitled to take such initiatives, the primary responsibility for his protection in this area is supposed to be assumed by the police and the Government. To what extent would this theory of Governmental ignorance effectively change the ground rules for our society?

In response to the problem of systematic law-breaking, the Prime Minister has said that a Royal Commission can be appointed. A further difficulty with both of these remedies is that they presuppose a knowledge in someone that police law-breaking has occurred. But, since so many of the operations concerned are covert in nature, the requisite knowledge simply may not exist. If the aggrieved citizen cannot know and the Minister is not supposed to know, who could possibly know enough to initiate the establishment of a Royal Commission?

Moreover, how consistent is this concept of Ministerial responsibility? According to this theory, the independence of police investigations "must not be impaired by even the suggestion of political interference". But, as we have seen above, a provision in the Official Secrets Act, adopted by Parliament at the urging of the Government, requires the Solicitor General, a politician, to authorize every bugging operation undertaken by the police in the security area. How is it possible for the Solicitor General to play this role responsibly without knowing a great deal about the day to day activities of the security force? Indeed, during 1976 the Solicitor General reportedly issued 517 warrants for electronic surveillance in security matters. In order to issue an average of almost 10 warrants per week, he would have found it necessary either to contravene the doctrine of Ministerial ignorance or his duty to scrutinize what he authorizes.

Even apart from the Trudeau statements of principle, it is to be expected that many incumbent Ministers might make an effort not to know things that could make their jobs difficult. Without trying to excuse any of the Ministers concerned, we believe that political considerations would be likely to deter Ministerial knowledge in many areas. The more they know, the greater the prospects of conflict with upper echelon police officials. Thus, even for a Minister who did not subscribe to the Trudeau doctrine, ignorance would appear to be a desirable state.

On the other hand, to what extent is it possible for the responsible Minister to acquire the knowledge he needs without undue political interference?

In response to these problems, the Commission might consider the appropriateness of the expanded notion of the federal police ombudsman which we discussed above. Even if principles or politics inhibited the Minister from scrutinizing many of the day to day police operations, perhaps the ombudsman might play that role? Suppose, contrary to the recommendations of the Love Committee, the ombudsman were given access to all RCMP files and operations, including those in the security area? And suppose, contrary to the recommendations of the Marin Inquiry, the ombudsman had a full staff of investigators? Under these circumstances, he could conduct continuing investigations and reviews of various day to day operations and report his findings to the Solicitor General.

In that way, political involvement in daily operations might focus on those cases where the ombudsman reported that there were apparent deviations from policy or law. Instead of facing only the pressures emanating from the RCMP, the Solicitor General would have to deal with the competing pressures from the ombudsman. The resulting tensions would keep the Minister from taking the path of least resistance. Indeed, the ombudsman might even enjoy, subject to certain security safeguards, a power within a certain period to publicize his findings. The introduction of such a countervailing force might help to resolve the problem of the Minister's knowing too much or too little.

As another possible instrument for dealing with this issue, the Commission might consider the use of an all party committee of the House of Commons. The dangers of political interference are minimized when more than one competing party is involved in the scrutiny.

One of the important facets of civilian control is the climate established by the Government. To what extent is the Government promoting an atmosphere favourable to police compliance with their legislative duties and policy guidelines?

Of particular concern here are a number of Government statements about police law-breaking. While acknowledging generally that the police must obey the law, these statements have offered certain rationalizations for some of the misconduct at issue. At the press conference following the disclosure of the break-in against the Parti Québecois, for example, the Prime Minister was quoted as follows.

> "What I am saying is that I am not prepared to condemn, you know, irremediably, the people at the time who might have done an illegal act in order to save a city from being blown up..."

The Prime Minister reportedly went on to discuss the periodic justification for what he called "technical" breaches of the law.

> "Policemen break the law, sometimes, I suppose, when they drive 80 miles an hour in order to catch the guy who is escaping from a bank..."

To invoke the inapplicable threat of mass destruction and the invalid analogy of escaping bank robbers is to encourage the inference that the Government does not fully disapprove of the law-breaking involved. Unfortunately, this impression has been reinforced on subsequent occasions. At his press conference following the allegations of illegal mail interceptions, the Prime Minister was quoted as saying that he can't get "wildly excited" about the revelations and allegations of RCMP law-breaking.

In order to ensure the survival of the fragile democratic processes, there must obtain in society an overwhelming consensus that the law should be obeyed. What concerns us about the statements we have quoted is that they run a great risk of fracturing that vital consensus. In saying this, we recognize the possibility

that circumstances could arise where courts and prosecutors might properly absolve a particular offender. But, despite whatever mitigating factors might affect any particular case, it is the duty of the Government to do everything possible to create an atmosphere which is inimical to the commission of offences.

To what extent do the impugned statements fulfil that standard? What should be recommended to Government about the public statements it has made and should make concerning the issue of police law-breaking? To what extent is the harmful effect dispelled by accompanying disclaimers about the duty of the police to obey the law? Do such general disclaimers abate the harm or create needless confusion? In our opinion, no Commission inquiry into the exercise of civilian control would be complete without a complementary probe into the impact of these contentious statements.

THE ACCESSIBILITY OF INFORMATION
vs.
THE PROTECTION OF SECRECY

Ultimately, the exercise of civilian control requires accountability to the entire electorate. But, in order to perform its review function, the electorate requires facts. It cannot effectively pass judgment on police and Government performance without knowing in some detail what these institutions are doing. Therefore, it would be appropriate for the Commission to consider the adequacy of public information concerning the activities at issue.

But disclosure to the country's citizens entails also disclosure to the country's enemies. In view of the many dangers which this world contains, it is not difficult to imagine the need for this country to have secrets and the need for some kind of power to prevent their disclosure. The issue is whether the current powers are appropriate or excessive for such purposes.

Subject to certain statutory and common law exceptions, the Government has a very wide discretion to withhold material from public scrutiny. While the claim for public access cannot be absolute, it is sufficiently central to the exercise of democratic control to warrant a much higher legal status than it currently enjoys. We believe the Commission should consider the recommendation of measures which would ensure the fullest possible public disclosure of such Government information.

How can a reasonable balance be struck between the need for openness and the requirements of secrecy? To what extent can this be done through a Freedom of Information Act? What improvements, if any, might Canada make on the experience with such legislation in other countries? Should the public be presumptively entitled to Government information subject to certain enumerated exceptions? To what extent should a Governmental claim for exemption be subject to compulsory reversal? What procedures ought to govern the adjudication of such matters?

The current law has traditionally recognized the power of the courts and special commissions of inquiry to compel, from reluctant governments, evidence that is relevant to their respective proceedings. But even here if the Government were to claim "national security", it might successfully withhold the material. On

a number of occasions during the course of the Keable and Laycraft Inquiries, for example, the Federal Solicitor General has filed special affidavits which effectively barred those inquiries from perusing certain federal documents. At a court hearing into the discharge of some Olympics personnel, a similar affidavit from the Federal Solicitor General blocked the court's access to certain evidence which was deemed essential for the interests of the aggrieved employees. On all of these occasions, the Solicitor General purported to be protecting vital state secrets the disclosure of which would jeopardize the national security of this country.

The difficulty here is the method by which this substantial power has been exercised. As a politican, the Solicitor General is vulnerable to the suspicion that his use of this power is designed to protect his own political interests rather than the nation's security interests. How far, then, should his judgment be subject to review and reversal by a court or other tribunal independent of Government? Note, for example, the introduction of such an in camera review process into some of the security issues which are involved in the administration of the Immigration Act. At some point before an immigrant is subject to deportation on the basis of special in camera hearings into any security threat he poses, an independent tribunal is empowered to review his case for the purpose of determining whether it is legitimate to proceed with it as a secret security matter.

In view of the suspicions of unfairness which are created by these powers, we believe this Royal Commission ought to inquire into this matter for the purpose of recommending the adoption of improved procedures. To whatever extent an independent review procedure were created, is it advisable to consider supplementary measures in order to prevent the further suspicion of rubber stamping? Since the aggrieved party cannot have access to the impugned material, might it be possible to provide for special security-cleared counsel to represent such interests at these in camera hearings? Is the court or other tribunal more likely to perform better if it faces conflicting representations rather than simply an ex parte submission from the Government? Moreover, in view of the general reluctance which courts and other

adjudicators will feel about interfering with Government judgments in these matters, might it help to provide fuller definitions of "national security"? A reviewing authority is better able to make its own judgments when it has to apply fairly discernible criteria to a given fact situation.

Can the inherent reluctance to interfere with Governmental discretion in such matters be overcome further by the use of a special tribunal for these purposes rather than the ordinary courts of law? Special tribunals can develop an expertise which would make them more confident about their judgments. On the other hand, this kind of tribunal might develop too cozy a relationship with the Government. One of the frequent criticisms of many regulatory agencies is that they come to identify too closely with the interests of the enterprises they have to regulate.

Moreover, should the Government or the aggrieved party be saddled with the duty of initiating the security review? Should the Solicitor General be able to act until the aggrieved party complains or should he be required to make an application as a condition of his power to withhold evidence from such scrutiny? In our opinion, the sorting out of these difficult issues will contribute substantially to the achievement of a better balance among the interests of security, procedural fairness, and democratic control.

THE TRAINING AND TREATMENT
of
FORCE MEMBERS

On Thursday, November 17, 1977 the Globe and Mail carried a letter attributed to one, J.F. Thrasher, a retired superintendent of the Royal Canadian Mounted Police. The following is an extract from this letter.

> "Faced with a murder and a kidnapping, as well as the unknown intentions of the hostile Parti Québecois and the FLQ, it was imperative that the identity of those involved and their objectives be determined. Subversion is an illegal activity and the participants exercise the utmost care to avoid detection..."

What strikes us as significant here is that in the context of a discussion about subversion, this retired RCMP official talks about the FLQ and the Parti Québecois almost interchangably. In view of the raid against the Parti Québecois, it appears that other members of the RCMP may have shared Mr. Thrasher's perceptions.

Indeed, this is one of the greatest concerns about police and security work - that in certain quarters there is a tendency to ultra conservative oversimplification. Inherent in such a political orientation is a predisposition to perceive left-wing heretics as subversive conspirators. Whether this orientation is primarily an outgrowth of the excessive caution associated with security work or whether those attracted to security work are primarily those with such views, we cannot say. What we can say, however, is that this kind of political orientation produces bad judgments. It leads to needless surveillance, unfair job denials, and improper measures against legitimate political dissenters.

While we are as reluctant to suggest a political belief test for the security service as we would be for most other Government jobs, we believe that a certain kind of political education might improve the performance of the security service. In response to the problem we have articulated, we would ask the Royal Commission to consider training programs which would sharpen the awareness of the crucial distinctions among the various political ideologies, particularly of the left. Early in their careers, security officers should be exposed to the phenomenon of the democratic radical - the political ideologue who is deeply opposed to many of the institutions in our society but is nevertheless committed to the democratic processes as the instrument of redress.

Of paramount importance in this regard is the distinction between the Parti Québecois and the FLQ. Regardless of a shared belief in political independence for Quebec, these two organizations have been miles apart on the propriety of the means to accomplish their goal. While the FLQ has been prepared to use the bullet, the Parti Québecois has confined itself to the ballot. Such distinctions must be impressed upon those who are engaged in security work.

Another example of this phenomenon is democratic socialism - the ideology which opposes the economic arrangements of capitalism but seeks to preserve the political institutions of democracy. Perhaps the training program could include seminar sessions with leading representatives of the New Democratic Party and the trade union movement? The commitment to democracy has led many Canadian social democrats and labour leaders into severe conflict with the totalitarian left. Moreover, the required and recommended reading list for trainees might include the writings of radical socialists from other countries. Consider, for example, Michael Harrington and Irving Howe from the United States. For all their desire to transform American social and economic life, such writers insist on preserving the liberties in the U.S. Bill of Rights. Exposure to these kinds of people might help to erode the dubious perceptions which appear to exist among sectors of the police and security service.

Another phenomenon to which these police personnel should be sensitized is the radical who, regardless of an undemocratic ideology, poses no threat to national security. Despite 40 years of surveillance against the Trotskyist U.S. Socialist Workers Party, American authorities have been unable to identify a single offence against the national security of their country. Revolutionary theories, by themselves, do not constitute a sufficient basis for such surveillance. There must also be some assessment of dangerousness.

In our opinion, the training of security service personnel should include this kind of political component. The more sophisticated their political education, the less they will be likely to threaten the exercise of legitimate and lawful dissent. While the Commission properly addresses itself to the viability of external controls and safeguards, there is no substitute for a security officer who understands more of the complexities with which he has to deal.

It is difficult to expect fair treatment from those who do not receive fair treatment. In many crucial matters, RCMP members are denied the minimum level of legal safeguards which the humblest of Canadians take for granted.

At the moment, for example, members of the RCMP are legally subject to imprisonment on the basis solely of RCMP service trials. These internal trials are conducted in camera and the accused Mounties have no right to representation by outside counsel. Moreover, while a Mountie accused of a service offence need not testify at his trial, he is one of the few people in our society who can be jailed for refusing to answer questions in the context of closed police investigations.

In our view, this Royal Commission should examine how far, if at all, the public interest requires the exercise of such extraordinary power over members of the RCMP. To whatever extent the offences in the RCMP Act are considered worthy of punishment by incarceration, is there any need for adjudication to be internal to the Department? Is there any reason why this jurisdiction could not be exercised in the ordinary way by the ordinary courts of law? Are there any special arguments for the general requirement that such trials be conducted in camera rather than in the open? Why shouldn't accused officers be entitled as of right to counsel outside the Department? Where the refusal to submit to Departmental interrogation might sometimes justify employment discipline, it is difficult to conceive of the circumstances under which such conduct could justify physical confinement. Is any overriding public interest served by the existence of such extraordinary measures?

At the moment, by virtue of both the RCMP Act and the common law, the RCMP Commissioner is virtually all-powerful as regards the employment conditions of Force members. Although we see no problem in the exercise by the Commissioner and his representatives of initiatory powers concerning employment conditions, we are troubled by the absence of proper review machinery. Under existing arrangements, if an RCMP member wished to question the propriety of a disciplinary suspension or discharge which had been imposed upon him, his only recourse would be to appeal within the Departmental structure.

Significantly, our society denies to RCMP members the most potent instrument of employment self-help, the right to strike. While it is not our function here necessarily to urge the adoption of such a right, its absence compounds our concern about the state of employment due process within the RCMP. Is there any reason why, for example, RCMP members should not have recourse to independent arbitration for their job-related discipline and discharge grievances?

Any analysis of these police practices would be incomplete without a complementary assessment of police rights. Fair play and wise public policy require a full examination into both components of the police officer's life.

THE PACE AND CONDUCT OF THE COMMISSION

The increase in the allegations against the RCMP has been accompanied by an increase in the demand for fast action by the Commission. From a number of quarters, the Commission has been exhorted to accelerate its hearings and,more recently,to issue an interim report. These growing demands reflect an understandable public concern that the process of delay could assist the wrongdoers in avoiding the course of justice. So long as responsibility is not assessed and the wrongdoers identified, the Government continues to function under a cloud of suspicion. The otherwise enviable reputation of the RCMP itself continues to deteriorate. The public is encouraged in the belief that there are indeed double standards in this society.

While we readily join with those who are urging faster action from this Commission, we believe that many of the delays could be avoided by seeking additional avenues of redress. In our opinion, part of the problem grows out of the apparent attempt by the Federal Government to grant this Commission a virtual monopoly on the RCMP investigations.

Why are the normal processes of law enforcement and government redress by-passed so completely? Why, for example, does the Federal Government withhold from the provincial Attorneys General the evidence concerning RCMP break-ins within their respective jurisdictions? The provincial authorities have a constitutional responsibility to enforce the criminal law. At some point, they will have to decide what legal processes to invoke in response to these various allegations. It is one thing for them to defer action on certain cases pending the advice of a Royal Commission. But it is another thing for unilateral action by the Federal Government to deprive them of an effective choice.

Moreover, why do the federal authorities need to defer their decisions in every allegation that comes within their jurisdiction? Surely there must be some cases where the Government perception of the facts is sufficiently clear to warrant action now - whether that concerns prosecutions for mail interceptions or disciplinary measures for misleading federal Cabinet Ministers.

In view of the scores of cases which are reportedly tied up this way, the Federal Government's behaviour in this matter fosters the suspicion that its purpose is delay. Such suspicions have been reinforced by the relentless efforts which have been conducted against the Keable Inquiry in the Province of Quebec. Because of that Inquiry's apparent effectiveness in rooting out evidence of RCMP misconduct, many questions have been raised about the Government's bona fides on this issue.

To whatever extent, therefore, the Government succeeds in treating the proceedings here as the exclusive forum for the RCMP cases, much of this skepticism could be transmitted to this Commission. There is a risk that the Commission could be perceived as an instrument of delaying tactics. In this regard, we note the misgivings which have already been expressed concerning the ostensible slowness of the Commission's procedures and the reported nature of its relations with the governing party.

We believe, therefore, that it would be helpful for the Commission to do what it can to eschew this monopoly position. In our view, it should issue very soon an interim report calling on the Federal Government to invoke, where practicable, the normal processes of law enforcement and Government redress. The Federal Government should be urged, at the very least, to initiate investigations, prosecutions, and disciplinary proceedings within its jurisdiction and to convey to the provincial Attorneys General whatever evidence falls within their jurisdictions. We believe that both the credibility of the Commission and public respect for the rule of law would be enhanced by a forthright recommendation which seeks to end these needless delays.

The interests of speed impel consideration of another vital matter. Perhaps the crucial issue to be examined here concerns the conduct of the Cabinet Ministers who had the oversight responsibility. How much did they know; how much should they have known?

In all likelihood, there will be a federal election during the year 1978. It is important that the electorate have as much information as possible so that it can exercise the wisest choice possible. Accordingly, we would ask that this Commission make every reasonable effort to subject the Cabinet Ministers concerned to a public examination of these matters before the election occurs. We realize that the Commission cannot determine the date of the election. We realize also the necessity for laying the proper ground work before Cabinet Ministers are called. We nevertheless request the Commission to make this effort because the stakes are so very high. It would be a misfortune for the democratic processes in this country if the Government's conduct in this matter were not adequately known to the public on the date of the election. All we can ask, therefore, is that the Commission do everything it can to see that this does not happen.

Not long after its decision to deny our organization and others the status to cross-examine evidence, the Commission was criticized for alleged softness on RCMP witnesses. Despite the possible contention that such criticisms might be premature at so early a stage in the Inquiry, it is clear that significant sectors of the media and the public perceive the Commission's conduct as too soft. While the Commission cannot be catering constantly to these perceptions, it should do everything reasonable to forestall their emergence. It cannot be stressed too often that the appearance of conscientiousness and impartiality is crucial to the work involved.

In our opinion, the Commission would have been less vulnerable to such criticisms if it had been more hospitable to outside involvement during the course of receiving testimony. We do not raise this issue in order to belabour a matter which the Commission has already resolved. Rather, we raise it in order to suggest a possible compromise for the remainder of the hearings. To the extent that the reluctance to grant such standing was affected by the number of parties requesting it, we would suggest that there is no need for an all or nothing at all approach. A possible response, in our view, would be for the Commission to appoint one counsel to represent, on a continuing basis, certain otherwise unrepresented interests. Whatever reluctance you may feel about subjecting every witness to the cross-examination of several outside counsel need not arise by the addition of only one.

At the moment, the implicated interests are represented by counsel on a continuing basis. Such interests include the Solicitor General and the RCMP. But there is no such continuing representation for the aggrieved interests. The owner of the barn which was burned, the occupants of premises which have been broken into, the senders and recipients of mail which has been intercepted, have a vital stake in these proceedings. Yet it is not expected that very many of these people will seek standing before this Commission. Indeed, most of the grievors will be unaware that they fall into this category. No doubt these proceedings will help, at some stage, to identify the aggrieved parties. But, in the meantime, their interests are left to be protected by the Commissioners and Commission counsel.

It reflects no disrespect for the Commission's members and counsel for us to recommend this appointment. The representation of a particular category of interests is not readily compatible with the Commission role as adjudicator among several interests. Nor would such a duplication of functions be likely to create a desirable public perception of the Commission's work. In this regard, it is significant to note that, despite the recognized stature of Commission counsel, a Globe and Mail column by Geoffrey Stevens recently contained the following statement.

> "...there's no public interest counsel at the McDonald Royal Commission on the RCMP".

Moreover, the best adjudication usually occurs in a setting where there are competing representations. But the way things are, there will be many situations here where the Commission and its counsel will be dealing only with those on one side, namely the representatives of the Solicitor General and the RCMP. The appointment we suggest would introduce a countervailing influence into the process and the public perception of it.

Such counsel could play the additional vital role which we had urged in our October submissions before the Commission. He could represent the public interest in maximum disclosure. When the Commission is faced with requests that it process certain evidence in camera, the new counsel, also cleared for security purposes, would be mandated to make representations against withholding the material from

public scrutiny. In the conflict between those counsel who are arguing for secrecy and those arguing for openness, the Commission and its counsel can better perform their adjudicative function. Moreover, in such a context they are more likely to be seen as impartial.

While ultimately the choice of counsel might reside in the Commission, it would be advisable to engage first in a series of consultations with interested groups and constituencies. To whatever extent the eventual choice were to accord with recommendations emerging from such consultations, the credibility of the Commission's work will have been substantially enhanced.

There is no doubt that the measure we urge has its shortcomings. It is not an adequate substitute for the conscious representation of the real grievors or for the involvement of public interest groups with their own unique orientation and contribution to these matters. We believe, however, that it represents a substantial improvement over the Commission's existing arrangements. That, in itself, should commend it for adoption.

SUMMARY
OF
RECOMMENDATIONS

The Canadian Civil Liberties Association respectfully requests this Royal Commission to adopt the following measures.

1. The Commission should proceed on the basis that the first priority is the launching of action in respect of the law-breaking to date.

2. In any assessment concerning the possible enlargement of police powers, the Commission should require the proponents to demonstrate the necessity.

3. Any Commission assessment of police powers should include the case for reduction as well as enlargement.

4. The Commission should assess the effectiveness of existing and additional safeguards against police abuse. In the latter category, it should consider the following:
   a) a broadened exclusionary rule against the admission of illegally obtained evidence in court
   b) a federal police ombudsman with a staff of external investigators.

5. The Commission should examine the devices for ensuring adequate civilian control of the police. This should include the following:
   a) an assessment of the doctrine of Ministerial ignorance concerning day to day activities of the police
   b) the effectiveness of an ombudsman or Parliamentary Committee empowered and enabled to scrutinize all RCMP files and operations including those in the security area
   c) an assessment of how public statements by the Government influence police compliance with statutory duty and Government policy.

6. The Commission should consider the adequacy of public information concerning police and Government performance. In particular, this should include the following:
   a) the appropriateness of a Freedom of Information Act and whether such an experiment in Canada could improve upon the experience in other countries
   b) the introduction of independent adjudication to review and reverse the assertion of national security claims.

7. The Commission should consider improvements in the training of security and police personnel so as to provide a higher level of political sophistication. In particular, this should involve the following:
   a) sensitization to the phenomenon of democratic radicalism

b) sensitization to the phenomenon of undemocratic but non-dangerous ideologies.

8. The Commission should consider improvements in the treatment of RCMP members. In particular, it should consider the following:
   a) whether RCMP members should be punishable by imprisonment for maintaining silence during closed Departmental investigations
   b) whether accused RCMP members should be entitled to a choice of counsel outside of the Department
   c) whether RCMP members should continue to be punishable by imprisonment on the basis of adjudication internal to the Department
   d) whether RCMP members should have recourse to independent arbitration for their job related discipline and discharge grievances.

9. The Commission should issue very soon an interim report calling upon the Federal Government to invoke, where practicable, the normal processes of law enforcement and government redress with respect to many of the charges of RCMP wrongdoing. In particular, it should urge the Federal Government to do the following:
   a) initiate investigations, prosecutions, and disciplinary proceedings within its jurisdiction
   b) convey to the provincial Attorneys General whatever evidence falls within their jurisdictions.

10. The Commission should make every reasonable effort to subject the Cabinet Ministers concerned to a public examination of their role in these matters before the next federal election.

11. The Commission should secure the appointment of special counsel, on an ongoing basis, to represent certain otherwise unrepresented interests such as those of aggrieved parties.

ADDENDUM TO SUBMISSIONS

by the

CANADIAN CIVIL LIBERTIES ASSOCIATION

to the

COMMISSION OF INQUIRY

CONCERNING

CERTAIN ACTIVITIES OF THE

ROYAL CANADIAN MOUNTED POLICE

Ottawa

January 30, 1978

Since our brief to this Commission was prepared, the Government of Canada has announced its intention to legalize certain mail interceptions by the RCMP. Of course, the detailed response of our organization will have to await the introduction of the Bill itself. At that point our representations may well have to be made directly to the Government.

But what is of vital relevance to these proceedings is the Government's apparent attitude to this Commission. For several months the Government has behaved as though it wanted this Commission to have a virtual monopoly on the investigations and follow-up to the allegations of RCMP law-breaking. In the face of pressing questions, the almost invariable Government reply was to refer the matter to this Commission. What has been especially disconcerting in this respect is the use of the Commission to replace the normal process of law enforcement. So often, for example, when the Government was urged to turn over evidence to the Provincial Attorneys General, its response was that it preferred to await the findings of this Commission.

Why, then,the impatience about legalizing mail interceptions? A persuasive case for such a power has yet to be made. Indeed, we would have thought that this Commission provided an opportune forum for the assessment of such proposals. The Government has a heavy onus, therefore, not only to demonstrate the necessity for its proposed legislation but also the basis for its apparently precipitous action.

In any event, what we must particularly question here are the priorities which have led to this selective impatience. The Government rushes to amend the law but not to enforce it. In the meantime, scores of cases involving serious allegations are delayed in the lengthy processes of a Commission of Inquiry. In consequence, a cloud of suspicion hovers over and clings to the Government, the RCMP, and indeed the administration of justice.

Surely the most pressing consideration is the dissipation of this suspicion. If ever there was a case for impatience, we would have thought that this was it. In view of the Commission's fate as an instrument by which these delays have been made possible,it should do everything it can to remedy its role. At the very least it should issue an early report calling for appropriate measures to invoke and accelerate the normal processes of law enforcement. At issue, in our view, is both the credibility of this Commission and public respect for the rule of law.