

December 7, 1945.

TOP SECRET

THE CORBY CASE

THE DOCUMENTS.

The documents made available by Corby are of such importance that some reference should be made to them as an introduction.

Although it may be suggested at some stage that the documents have been fabricated, there can be no doubt that they are genuine. Corby's evidence will prove their source and authenticity. Large parts of them are in the handwriting of the various custodians and their writing can, in almost all if not all cases, be proved by handwriting experts from a comparison with other samples of writing known to be genuine.

Notwithstanding the manner in which they were made available, these documents are admissible and would be received in evidence by a Court or a Royal Commission. There is no way in which the owners could recover possession of them, even if they desired to do so, without the assistance of the Canadian Government, which assistance the Government is justified in refusing.

While it is possible, it would seem to be improbable that the owners would take any steps to attempt to repossess these documents because that would be an admission that they were genuine and, in that case, the mere publication of them, whether any proceedings were taken or not, would have a disastrous result so far as the owners are concerned.

The documents being genuine, the next question that arises is the effective use that could be made of them in proceedings before a Court or a Royal Commission. They are, of course, evidence against those in whose custody they were and those who brought them into existence, but, with the exceptions to be noted subsequently, those persons are not amenable to the jurisdiction of any Canadian Court or of a Royal Commission.

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The exceptions are four in number. There are amongst these documents, documents in the handwriting of Back, Badeau, Nora and Gray. In the case of the latter there is some doubt as yet as to whether the handwriting is Gray's or that of his wife. Even if the handwriting were that of Gray's wife, it would probably be sufficient to connect Gray with the conspiracy. In addition, there are certain documents typewritten and signed on the typewriter by Back which could probably be proved to have been typewritten on a machine owned by or accessible to Back.

These four then can definitely be connected with the existence of the documents which they themselves had created. Their writings would be admissible in evidence against them, either in a Court or before a Royal Commission. The only question that might arise in the case of these four is whether or not they were parties to a conspiracy to make these documents available for the purposes alleged or were merely supplying them as Party members to other members of the Party. I am of opinion that it would be found that they were parties to a conspiracy to make these documents available to the persons into whose hands they got and, in addition, they have committed offences against the Official Secrets Act and possibly within the scope of some sections of the Criminal Code.

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THE ADVISABILITY OF CRIMINAL PROCEEDINGS

I am of opinion that criminal proceedings at this stage are not advisable. No prosecution with the evidence now available could succeed except one of Back, Badeau, Nora and Gray. It would be a mistake, at this stage, to launch proceedings limited in this way. Even if all of the persons under suspicion were detained and interrogated by Order of the Minister, made under the special Order in Council, it is doubtful what use could be made in a criminal prosecution of the information so obtained. If any of those interrogated

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made confessions, they would probably be willing to give evidence which could be used in a criminal prosecution, but as I feel so strongly that no such prosecution should be launched, I have not explored this phase of the matter further at the present.

THE ADVISABILITY OF PROCEEDINGS BY WAY OF ROYAL COMMISSION.

In my opinion this is the procedure which should be followed, and I would recommend that it be, subject to the suggestions to be made subsequently. A Royal Commission of Investigation is unquestionably justified. The Commission has full control over its own procedure and the way in which it will handle all matters coming before it. It may, and in this case should, sit in camera. It need not be bound by the ordinary rules of evidence if it considers it desirable to disregard them. It need not permit counsel to appear for those to be interrogated by or before it.

As the matter is of such great importance, I would suggest that the Commission should consist of three judges, so that the responsibility would be shared amongst them. Upon further consideration I think a Commission of two judges would be more satisfactory. The responsibility would be shared and two of the Judges of the Supreme Court of Canada might be appointed. 25
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55 should have counsel to assist it and, as there is a great deal of work to be done both in preparation for the Commission and in carrying out the work of the Commission, at least two and perhaps three counsel would seem to be desirable.

In my opinion, the Commission should sit in camera, should make its enquiries in the widest possible way, should not be bound by the strict rules of evidence, and should not allow counsel to appear for those summoned before it. The vital nature of the matters to be dealt with fully justify the procedure recommended.

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DELAY IN PROCEEDING.

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In my opinion nothing has been lost, up to the present, by not taking proceedings. In fact, in my judgment, the position has, if anything, been improved. Upon Corby's disappearance, word must have gone out to the various contacts to discontinue their operations. Three months to the day has elapsed, and during that period a gradual feeling of security has undoubtedly come over those who would be alarmed by the disappearance. Nothing has been said or done by Corby's employers to indicate any concern, and no action has been taken in Canada or elsewhere as a possible preparation for a situation that might develop or any anticipation of such a situation.

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If those whose conduct is to be investigated are now taken into custody and, after a lapse of some days interrogated, the results would probably be better after a period of relaxation from fear of proceedings than if they had been taken into custody at once. Any prearranged stories which they may have learned will not be as distinct and clear-cut as they would have been and there is some possibility of even a limited number suffering from reaction and deciding to tell what they know or at least part of it.

One of the results that would probably flow from the report of the Commission would be a request by the Canadian Government for the removal of certain persons. In anticipation of such a request, these persons might be moved before the Commission sat or before it made its report, and it might be considered that, in such a case, some of the benefits of the Commission would be lost. On the other hand, the removal of any of these men whose names subsequently appeared in the report of the Commission could, and probably would, be considered as

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a confession in advance of the fact that they were involved in the improper proceedings.

However, on the whole, if proceedings are to be taken they should, I believe, be taken comparatively soon now. There is always the question of what Corby might do and the possibility that, if this matter dragged on indefinitely, he would commit suicide or suffer a mental breakdown.

THE PROCEDURE BEFORE THE ROYAL COMMISSION

I would recommend that the Commission should take Corby's evidence and get all the documents on the records of the Commission before any of the persons to be examined before it are detained and interrogated.

The detention of ten or fifteen people, all taken into custody at the same time and held in a place where they could not be communicated with and, in fact, in a place which would be unknown to their families and friends would undoubtedly be a matter of public comment and a statement would have to be made to let the public know something of what was being done. If these people were detained and interrogated before the Commission started to sit, more will have to be disclosed than would be desirable until after Corby's evidence had been taken.

Corby's evidence should be taken as soon as conveniently possible after the Commission is set up.

Once his evidence has been taken, the Commission could adjourn and the persons whose conduct is to be investigated could be arrested and questioned. As soon as this was completed, the Commission could resume its work and have these various persons before it for examination.

I would recommend that only those connected with Government Departments and the Office of the High Commissioner should be detained and interrogated. These would be Bacon, Prometheus

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Leader, Polland, Bagley, Badeau, the Professor, Foster, Gray, Ernst, Nora, Elli and Back. This list omits Dick, Jack, who is unidentified, Freda, who is unidentified, and Alec, who is not in Canada. Freda also is not in Canada. If Jack and Freda are subsequently identified and can be made available, consideration should be given to detaining and interrogating them, and it may turn out that Dick may have to be detained and interrogated.

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I consider that it is advisable to detain and interrogate only those in the Departments at the present time, and it will be observed that the above excludes.....whom I should leave out at the moment. I am of opinion that it would be inadvisable to detain and interrogate either Debouz or Frank. At the present time it is going to be very difficult, if not impossible, to link Debouz up with the others.I can see no disadvantage in leaving Debouz and Frank out at the present time. If they have some sense of security it may be helpful in the subsequent investigations which will have to be made. Further, I again emphasize what I consider to be the advantages of confining the enquiry, at first, to Government officials and employees.

Before those who are detained and interrogated are summoned before the Commission, I would recommend that evidence be given in the case of each of them by their superiors of the positions that each held in the Services, the nature of their duties, to what extent they are confidential and to what extent they had opportunities for access to the documents or information which they made available. I assume that most or all of them signed declarations of secrecy, which should be placed before the Commission and full evidence be given as to the measure of trust which was placed in them.

The interrogations will almost certainly result in further leads, which should be followed up and evidence obtained

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as a result of those and any other evidence obtained by the investigators should probably be given before the persons interrogated are heard, although this would require further consideration as, in some cases, the evidence may require to be given later.

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SHOULD ANY ACTION BE TAKEN?

I understand that I am desired to express an opinion as to whether any action should be taken in respect of this matter. I realise to the full the present international situation and the necessity of doing everything possible to ensure that the United Nations Organization should function as satisfactory and smoothly as possible. I realize also that everything should be done to ensure that. Nevertheless, I feel that action should be taken in connection with this vitally serious matter.

What has already come to light has indicated that it is comparatively simple for an organization of the kind with which we are dealing to infiltrate into all Government Departments, even into positions of the greatest trust and responsibility. At the present time everyone in the Government Service is a suspect. This position is an intolerable one and, in justice to the overwhelming percentage of Government officials and employees, should not be permitted to continue. Further definite action in the case of those who have already offended would be a deterrent to others who might be added to the illicit organization.

Assuming that the present organization was disbanded or not used, there is nothing to prevent it being reorganized or used at a later date. It is altogether probable that there may be a secondary or completely different organization of which nothing is known at the present time, and it is entirely possible, and in fact probable, that, while the present organization is not operating, there is another organization which is operating.

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If nothing is done, other officials and employees may also be corrupted and the infection spread widely through the whole Service.

If the shoe were on the other foot, there is no doubt but what the other Government would have acted promptly and effectively. It is composed of realists and there have been episodes where governments other than the Canadian Government have had to take a firm and, in fact, aggressive attitude, not in respect of matters of this kind but in respect of matters of high policy, and such an attitude has resulted in the apparent or temporary change of policy by the Government in question.

Taking the broadest view possible, I am of opinion that a definite course of action such as outlined above has much more to recommend it than a policy of ignoring the situation. What might be expected is that when the Commission makes its report, the Government in question would disavow its employees and, in any event, could not resist a request that they be moved out at once. In my opinion it would not affect international relations on the highest level if proceedings were taken by way of Royal Commission in the manner I have indicated, and I have no hesitation in recommending them if my recommendation is desired.

CRIMINAL PROCEEDINGS FOLLOWING THE COMMISSION

As I view the matter at the present time, the punishment of the offenders is the least important phase of this matter. Undoubtedly a number of them could be prosecuted in the courts and, in such cases, prosecution should take place. It might be that, in such cases, it would be possible to prosecute individuals for specific individual offences and, wherever evidence justified such a prosecution, it would have to take place. It might be necessary to prosecute some for conspiracy

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to commit these offences.

WOULD A DEPARTMENTAL INQUIRY BE ADVISABLE

I suggest that a Departmental Inquiry or Departmental Inquiries would not be as satisfactory as the proceedings outlined above. The findings would not have the weight of those of a Royal Commission; which is the most important consideration, and there could also be no suggestion, in the case of a Royal Commission which would be impersonal, of either undue severity or a tendency to leniency which might be seen by some of the public in the case of a Departmental Inquiry.

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THE FORM OF THE ROYAL COMMISSION

If a Commission is decided upon its form should be most carefully drafted and it should be based on the common law power, as well as the statutory power given by the Inquiries Act.

(Sgd.) E. K. WILLIAMS

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