COMMENT

CHRONIQUE DE LÉGISLATION

Parliamentary Control of Security Activities

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The author considers three different authoritative views on parliamentary control of security activities: those of the McDonald Commission, the Federal Government (as recently outlined in Bill C-157 and Bill C-9) and the Special Senate Committee on the Canadian Security Intelligence Service, which reviewed Bill C-157. He concludes that the Committee proposals go a long way towards correcting the flaws in Bill C-157. However, certain major issues remain to be solved, and the author recommends solutions based on the positions taken by the authorities he has canvassed.

Dans cette chronique de législation, l'auteur discute des points de vue de trois organes administratifs sur le contrôle parlementaire en matière de sécurité: la Commission McDonald, le gouvernement fédéral (par ses projets de loi C-157 et C-9) et le Comité sénatorial spécial du Service canadien du renseignement de sécurité, qui a révisé le premier projet de loi. Il déduit que les propositions du Comité tentent largement à corriger les vices du projet de loi C-157. Toutefois, conclut l'auteur, certaines questions impératives restent à résoudre. Ainsi propose-t-il des solutions, fondées sur les opinions des trois autorités examinées.

Synopsis

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Introduction

Security activities pose particular problems for a democracy. While they are not normally large in terms of manpower and expense, they directly affect privacy, freedoms of speech and association, and other fundamental personal and political rights. As Senator Pitfield noted: "The *raison d'être* of a security service is the maintenance of a free and democratic society. But if an agency has too much, or inadequately controlled power, it can be a threat to individual rights. On the other hand, if the security of the state is not sufficiently protected, there is a danger of the weakening of a society in which freedom and demoeracy should flourish."[1]

Security activities are difficult to control. Parliamentary control of the executive is based upon three principles: first, that administrative activities are conducted under the authority of, and within the limits of, the law; second, that a Minister of the Crown is responsible for administration and accountable to Parliament; and third, that parliamentary scrutiny is conducted in public, and publicity is the effective sanction over the executive.

Security activities make effective exercise of all three principles difficult. First, as the Mackenzie Commission pointed out: "A Security Service will inevitably be involved with actions that may contravene the spirit if not the letter of the law, and with clandestine and other activities which may sometimes seem to infringe on individuals' rights."[2] Second, the practice in Canada has been that the Minister responsible for security matters has had limited knowledge and control over their activities. Prime Minister Trudeau made it "quite clear that the policy of this Government, and I believe the previous governments in this country, has been that they ... should be kept in ignorance of the day-to-day operations of the police force and even of the security force ... the particular Minister of the day should not have a right to know what the police are doing constantly in their investigative practices ... I would be much concerned if ... the Ministers were to know and therefore be held responsible for a lot of things taking place under the name of security or criminal investigation."[3] Third, most security activities must by their nature be secret; publicity would destroy their effectiveness.

The Canadian Parliament has exercised no direct control over security activities, either through legislative mandate or through committee review. This is not, however, to say that Parliament has been uninterested in them.

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[1]Debates of the Senate, 1st Sess., 32nd Parl. (3 Nov. 1983) 6131.

[2]*Report of the Royal Commission on Security (Abridged)* (1969) 21.

[3]Prime Minister's Press Conference, December 9, 1977. Quoted in: Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Second Report, *Freedom and Security under the Law*, Vol. 2 (1981) 1006.

From 1966 to 1968 the House of Commons spent 280 hours debating security issues. As in a year there are something under 400 hours available for government business, the total allotted to security represents more than half the Government's time for one annual session. This is no small total for the thirteen year period, and not many programmes would greatly exceed it. Debates were, however, concentrated on only a few topics. About half of the total was over the Spencer and Munsinger issues of 1966, and the 1970-1 debates on the invocation of the *War Measures Act* and the subsequent *Public Order Act.* The third large chunk was the security issues of 1977-8.[4]

Parliamentary discussion, in short, has been spotty and partial. Some issues have been flogged to death, and others ignored. The House of Commons has never debated the exhaustive and important report of the recent Commission of Inquiry (the McDonald Commission). In fact, the report has not even been tabled in Parliament. Debate, questions and committee consideration have concentrated on a few, usually minor, questions without touching on the fundamental problems. There has never been a full debate on security matters, and the government has never publicly informed Parliament of the policies, programmes and activities of the security branch.

The McDonald Commission made the first systematic review in Canada's history of the legislative mandate and control structure for security matters. The Government's response to this was Bill C-157, *An Act to Establish the Canadian Security Intelligence Service,* which has recently been reviewed by a committee of the Senate chaired by Michael Pitfield. More recently, on January 18, 1984, the Government tabled Bill C-9, *An Act to Establish the Canadian Security Intelligence Service, to enact an Act respecting enforcement in relation to certain security and related offences and to amend certain Acts in consequence thereof or in relation thereto.* There are now, then, three different authoritative views on parliamentary control of security activities: the Commission's, the Government's, and the Committee's.

I. The McDonald Commission

The McDonald Commission concluded that Canada needed a civilian security agency outside the R.C.M.P.:

> The agency should be established by an Act of Parliament. That Act should define the organization's mandate, its basic functions, its powers and the conditions under which they may be used, and its organizational structure. It should also provide for its direction by government and for independent review of its activities. The statutory definition of its mandate should define the types

[4]See C.E.S. Franks, *Parliament and Security Matters* (1980) 22-8.

> of activity constituting threats to the security of Canada to which the intelligence collection work of the agency must be confined. There must be no undisclosed additions to this mandate by the agency itself or by the executive branch of government, whether such additions be inadvertent or deliberate.[5]

The Commission proposed that responsibility for overseeing the implementation of the security organization's statutory mandate should rest with the Prime Minister and the Cabinet, while ministerial direction should be the responsibility of the Solicitor General. In resolving the problem of how much the Minister should know, the Commission concluded that his responsibility "must extend to the policy of operations. He must have knowledge of all investigative techniques and liaison arrangements. Difficult or sensitive operational decisions must not be kept from the Minister but, on the contrary, brought to him for decision and, if necessary, taken by him in turn to the Prime Minister or Cabinet."[6]

Activities which potentially transgressed the law or affected the rights and privacy of citizens needed to be clearly controlled. The Commission felt that the security service's choice of targets must be guided by the intelligence priorities set by the Cabinet, and that they must be within the categories which Parliament has authorized as proper subjects for the security agency's surveillance. "[I]nvestigations involving the most intrusive techniques of investigation, deep cover human sources and undercover agents, the interception of private communications and the surreptitious entry and search of premises must be undertaken only after approval by the Director General of the agency and the Solicitor General and on the basis of well-defined standards of necessity."[7] The legality of proposed investigations would have to be reviewed by a member of the Department of Justice. "In addition to ministerial approval, the use of certain aural and visual surveillance techniques, mail checks, surreptitious entry of private premises and access to confidential personal information in government files should require judicial warrants. The role of the judge is to ensure that the standard set down by statute for the use of these techniques has been met."[8]

To guard against the use of a security agency for partisan political or personal reasons, which the thoroughness of ministerial direction and control proposed by the Commission made a possibility, the Commission decided "the Director General should have by statute some security of tenure for his term of office, and he should have direct access in urgent situations to the Prime Minister and to an independent review body. Also, the leaders

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[5]Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Second Report, *Freedom and Security under the Law*, Vol. 1 (1981) 423.

[6]*Ibid.*, 424.

[7]*Ibid.*, 424-5.

[8]*Ibid.*, 425.

of parliamentary parties should be consulted on the appointment of the Director General."[9]

According to the Commission, "[t]he secrecy of intelligence operations, their lack of exposure to judicial examination and comment, the danger to civil liberties of excessive surveillance, and the record of past wrong-doings, all point to the need for an effective review of security operation by persons independent of the government of the day."[10] The proposed review structure was complex. An Advisory Council on Security and Intelligence "would carry out a continuous *ex post facto* review of the agency's activities, focussing on their legality and propriety. It would have no executive powers but would report on an advisory basis to the Solicitor General. It would also report to a joint standing committee of Parliament and, at least annually, issue a public report."[11] The Advisory Council would help the Solicitor General to encourage wider public discussion and study of security issues than in the past.

Active oversight by Parliament was, the Commission felt, an essential part of the control system:

> Parliament requires an enhanced capacity to scrutinize security and intelligence activities. The necessarily secret nature of these activities makes it impossible for Parliamentary scrutiny to be exercised effectively through any mechanism other than a small committee whose members either include the party leaders or are selected by them. This Committee's effectiveness will depend on its capacity to develop and maintain the confidence of all parliamentary parties, as well as that of the government and the security agency. The scope of the scrutiny exercised both by the Joint Parliamentary Committee on Security and Intelligence and by the Advisory Council on Security and Intelligence should extend to the activities of all those intelligence collecting agencies and departments of the federal government whose activities involve the use of covert techniques of investigation. If independent and parliamentary review focusses solely on the security intelligence agency, there is a danger that a government might, wittingly or unwittingly, circumvent this scrutiny by assigning surveillance tasks to other agencies.[12]

The Commission found that in the past the ability of Ministers to answer questions in Parliament was limited because: "first, Ministers did not have sufficient knowledge of the operational policies and practices of the R.C.M.P. Security Service, and second, Ministers lacked means of ensuring that answers to parliamentary questions about the Security Service supplied by the R.C.M.P. were accurate, complete, and understandable by

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[9] *Ibid.*, 425.
[10] *Ibid.*, 425.
[11] *Ibid.*, 425-6.
[12] *Ibid.*, 426.

the audience to which they were addressed."[13] With the changes proposed by the Commission for strengthening internal government control, "Ministers will at least possess the knowledge to answer questions about security intelligence activities asked in the House of Commons. Of course, because of the need for secrecy with respect to many aspects of security operations, they may not choose to divulge in public some of the information which they have: but such non-disclosure will be of their own choosing and not because the information is kept from them by the security organization. To insist that this condition be realized is to demand nothing more than that a fundamental principle of responsible government be applied to security intelligence activities undertaken on behalf of the Government of Canada."[14]

The Joint Parliamentary Committee proposed by the Commission was to be a small one, of not more than ten members. Parliamentarians on the Committee should be ones whose commitment to Canada's democratic system of government is unquestionable and who have "the confidence of the recognized parties in Parliament, the leaders of opposition parties should personally select members of their party and, if possible, serve themselves on the Committee."[15] The Committee must have much more continuity in membership than most parliamentary committees, and would conduct most of its investigations *in camera*, unlike normal parliamentary practice. The Committee could, like British Parliamentary Committees, publish an edited record of its *in camera* proceedings. The Commission found that its "own experience suggests that such a procedure can produce a record that retains an account of the important policy issues while editing out references to specific sources, targets or organizational features, which might damage security."[16] This would help to inform the public and "[i]nformed public criticism of government is essential to democracy. In the final analysis ... security must not be regarded as more important than democracy, for the fundamental purpose of security is the preservation of our democratic system."[17]

The Commission recognized that the Committee would face problems because of the dominant role of adversarial partisan politics in Parliament:

> Participation in *in camera* sessions by members of opposition parties raises the prospect of reducing their freedom to criticize the government's handling of intelligence and security matters. Reluctance to compromise their right to criticize the government was a factor, on occasions in the past, which inhibited Leaders of the Opposition from accepting invitations from Prime Ministers to be briefed on some security matter. We can see no tidy solution to this problem.

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[13]Commission of Inquiry, *supra*, note 3, 895.
[14]*Ibid.*, 896.
[15]*Ibid.*, 897.
[16]*Ibid.*, 901.
[17]*Ibid.*, 901.

> Knowledge brings with it the burden of responsibility to respect the conditions under which the knowledge has been provided. The alternative is to provide no authorized means of informing opposition members about significant intelligence and security matters, and to continue to leave them dependent on unauthorized leaks of information. We think that almost total dependence on leaks is undesirable: leaks of information are likely to be organized by disgruntled members of the security intelligence organization or by hostile intelligence agencies.[18]

The concern of the opposition over receiving false goods in briefings by the Government is not misplaced: the Government in 1977 claimed that all activities of the R.C.M.P. took place within the law, only to be proven incorrect.[19] Regardless of whether the R.C.M.P. misinformed the Government, or the Government deliberately misinformed Parliament, the point remains that any private briefings or assurance the opposition received would have misled and muzzled them to the detriment of their effectiveness in scrutinizing and controlling the Government.

On the other side of the coin, the Commission noted that there was a possibility:

> [O]f members of the Committee leaking information for partisan purposes to embarrass the government or to obtain publicity for themselves or their party. A minimum amount of realism about the role of partisanship in democratic politics makes it necessary to acknowledge this risk. We are not in a position, and we doubt that anyone else is, to be categorical about the extent of this risk in the context of Canadian politics. However, we are not aware of evidence which could indicate that members of the Canadian Parliament are so much more partisan and so much less trustworthy than are members of the United States Congress or the Bundestag of the Federal Republic of Germany who serve on security intelligence oversight committees.[20]

Members of Parliament, unlike members of a security service, live in a world of publicity and public discussion. The risk of divulgence of confidential material, if even inadvertently, is constantly present. The "Munsinger Affair" was made public in this way.[21]

Parliament, particularly through the activities of the new Committee, would, the Committee hoped, be the main vehicle for reducing secrecy and encouraging public discussion. This was essential because:

> [T]he main sources of 'information' for most Canadians are newspaper disclosures of 'spy scandals' and popular works of fiction. Public discussion of Canada's internal security arrangements tends to be dominated by two groups who advance positions at two extreme poles: those who contend that the threats

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[18]*Ibid.*, 900.

[19]Franks, *supra*, note 4, 11-39, especially 30-1.

[20]Commission of Inquiry, *supra*, note 3, 902.

[21]H.C. Debates, Vol. 2 (Mar. 4, 1966) 2211. See also Franks, *supra*, note 4, 43.

> to security are so serious that the wisest course is to disclose as little information as possible about the measures taken to counter these threats and those who contend just the opposite — that Canada is so fortunately immune from threats to its security that there are no secrets worth keeping. We think that both of these groups are wrong. There are serious threats to the security of Canada but they are not so serious as to prevent a reasonable amount of informed discussion about the nature of these threats and the measures necessary to protect Canada against them.[22]

II. Bill C-157

The report of the McDonald Commission was made public in August, 1981. The Government's response, Bill C-157, *An Act to Establish the Canadian Security Intelligence Service*, was introduced in Parliament in May, 1983. In between there was no debate or even discussion in the House of Commons of the Commission's report, nor has there been yet. Furthermore, Bill C-157 has yet to be considered by the Commons.

In its broad lines, Bill C-157 supported the main recommendations of the Commission. The security service was to be outside the R.C.M.P. (In fact, the Government had begun the process of extracting the service from the R.C.M.P. and creating a civilian service long before the legislation was introduced. The Government had also appointed a Director to the agency without doing as the McDonald Commission recommended and consulting with the Leader of the Opposition.) It was to have a legislative mandate which defined the scope of its activities and powers. Many significant aspects and details were different, however. This was particularly true for the structures and processes of control, where the Government's proposals were much weaker than those recommended by the Commission.

The Bill, like the Commission's report, required that members of the security service would have to obtain judicial warrants before intercepting communications, trespassing, or installing electronic surveillance devices. However, the test for obtaining these warrants was less exacting than that proposed by the Commission, and iguored the Commission's proposals for the protection of persons and property.[23] More important for parliamentary control, where the Commission had recommended that the approval of the Minister must be obtained before these intrusive methods of investigation be used, Bill C-157 rejected this approach and left the final responsibility with the Director of the Service, who would consult with the Deputy Minister.[24]

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[22]Commission of Inquiry, *supra*, note 3, 905.

[23]*An Act to Establish the Canadian Security Intelligence Service*, Bill C-157 (First reading, May 18, 1983), 1st Sess., 32nd Parl. (Canada), 22-6.

[24]*Ibid.*, ss 6-7.

Section 21(1) of the Bill further weakened the controls by establishing that "[t]he Director and employees are justified in taking such reasonable actions as are reasonably necessary to enable them to perform the duties and functions of the Service under this Act." Whether these reasonable and reasonably necessary actions were unlawful or not was left to the Director to decide.

The role proposed for the Solicitor General in Bill C-157 was extremely limited. The security service was under the control and management of the Director, not the Minister, although the Minister "may issue general directions in writing to the Director," with which the latter "shall comply."[25] However, the Minister was not empowered to override the decision of the Director on "the question of whether the Service should collect or disclose information or intelligence in relation to a particular person or group," or "the specific information, intelligence or advice that should be given by the Service to the Government."[26] The Minister was not, in contradiction to the Commission, to have full power of direction over the agency. Instead, the Director was to have a substantial autonomy and independence, with the Minister's role limited to general policy directions. The Government's proposal would severely hamper the Minister's capacity to answer questions in the House and his responsibility for those answers. It would, as Peter Russell has said, elevate plausible deniability into a statutory principle.[27]

The argument against ministerial control over the security service is that politicians would use the service for partisan or personal ends. However, neither the McDonald Commission nor anyone else has claimed that this is a problem in Canada, unlike the serious weaknesses in control of the service by politicians, and the *lacunae* in responsibility and accountability. The Government's proposals here were in direct contradiction to a fundamental principle asserted by the Commission.

This weakening of ministerial responsibility was, in Bill C-157, repeated in a weakening of other external controls. In place of the Advisory Council on Security and Intelligence proposed by the Commission, the Government offered a two-tiered system. An Inspector General, responsible to the Deputy Minister, would review the operational activities of the security service. The Director would submit annual reports to the Minister, and the Inspector General would certify whether he was satisfied with the report, and whether the service had acted unlawfully or engaged in unreasonable or unnecessary exercise of its powers.[28]

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[25]*Ibid.*, ss 6(1) and 6(2).

[26]*Ibid.*, s. 6(3).

[27]Russell, *The Proposed Charter for a Civilian Intelligence Agency: An Appraisal* (1983) 9 Canadian Public Policy/Analyse de Politiques 326 (September).

[28]*Supra*, note 23, s. 29.

The second tier was a Security Intelligence Review Committee,[29] consisting of three Privy Councillors, not members of the Senate or House of Commons, appointed after consultation by the Prime Minister with the Leader of the Opposition and the leaders of each party having at least twelve seats in the House. This Committee would review the reports of the Director, the certificates of the Inspector General, and the general directions of the Minister. The Committee would have extensive powers, both to order investigations by the Director and to make its own investigations. The Review Committee must report annually to the Minister, and the Minister in turn must table these reports in Parliament.

No mention was made in Bill C-157 of review by the parliamentary committee, although the rules of the House would require the reports to be forwarded to the appropriate committee of the Commons, which for the security service would be the Standing Committee on Justice and Legal Affairs.

This control structure was weaker than that proposed by the Commission in several respects. First, neither the Inspector General nor the Review Committee were to have access to confidences of the Queen's Privy Council — cabinet documents — even though these were under the control of the security service.[30] Second, the review agencies only looked at the activities of the security service, and it is possible that a government in attempting to elude control could arrange that other agencies, such as the military, the R.C.M.P., or the National Research Council, would do their dirty work in security. Third, control by Parliament would be weaker not only because the Solicitor General would not be answerable on many vital questions, but also because in place of the strong parliamentary committee proposed by the Commission, the Government had substituted a weak and optional review by a standing committee whose main interests were in other fields. The report to Parliament by the Security Review Committee and Minister would likely be skimpy, and inadequate to encourage the sort of public discussion envisaged by the Commission. Committee review, even if *in camera*, would not be much of an improvement. The McDonald Commission had discovered that review by the Justice and Legal Affairs Committee was not satisfactory:

> [T]hat Committee is too large, its membership too fluctuating and its procedures too restrictive of the time which each of its members has to raise questions and pursue a line of inquiry. Our examination of the record of that Committee's *in camera* meetings in 1977, when public disclosures had focussed attention on the R.C.M.P., indicated the inherent difficulties faced by such a committee when it comes to inquiring about policy issues arising from security

[29]*Supra*, note 23, ss 30-50.

[30]*Supra*, note 23, ss 28(3) and 28(4).

> intelligence activities. Most of the time at these meetings was spent receiving the views of security officials and members of the R.C.M.P. While what they said was educational, most of it could have been, and indeed has been, stated in public.[31]

The Government had considerably altered the structure of ministerial responsibility and parliamentary accountability proposed by the Commission.

III. The Senate Committee

The Senate Committee, chaired by Michael Pitfield, reviewed Bill C-157 and reported in November, 1983.[32] It supported the main elements of the Goverument's proposals, including tlie creation of a civilian Security Intelligence Service. It also, however, proposed more stringent controls. It suggested iinprovements to the wording of the clauses of tlie Bill describing primary functions and mandate. The conditions necessary to satisfy a judge before the issuance of a warrant for the use of intrusive investigative techniques proposed was more in line witli the McDonald Commission than Bill C-157 was. To resolve tlie problems of tlie standard of double reasonableness in section 21 (or should it be a double standard of reasonableness?), tlie Committee recommended that section 21(1) be replaced with a provision tliat deems security agents, acting in the performance of their duties, are peace officers under section 25 of tlie *Criminal Code.* This would allow agents in such situations to avail themselves of whatever protection peace officers have at common law.

The Committee agreed witli tlie division of responsibility in section 6(2), that the security service be placed under the control and management of a Director, subject to general directions from tlie Minister, but disagreed with section 6(3) which prevented the Minister from overriding the Director. Tlie Committee felt the Minister should not be insulated to too large a degree from operational matters, but sliould have responsibility much like tlie relationship between other Ministers of the Crown and independent agencies. The Minister sliould "have full political responsibility for matters about which lie reasonably can be expected to have knowledge."[33]

Tlie Inspector General, the Committee felt, should liave access to Cabinet documents relating to the security agency. The Committee supported the idea of tlie Review Committee, and in fact proposed increasing its membership and powers, and improving the method of appointment. It hoped that the Review Committee's reports would ensure adequate debate, and

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[31]Commission of Inquiry, *supra*, note 3, 896.

[32]Special Senate Committee on the Canadian Security Intelligence Service, *Report — Delicate Balance: A Security Intelligence Service in Democratic Society* (November 1983).

[33]*Ibid.*, para. 83.

bring issues of policy and impropriety into focus for parliamentary and public discussion.

The Committee agreed with the Government, and disagreed with the McDonald Commission, on the issues of a special parliamentary committee on security. Such a committee was undesirable because it would duplicate the work of the Review Committee, and would be subject to the vagaries of time, changes in membership, and overwork. It might also have problems in maintaining the security of information both because of partisan motivations of its members, and because there was a "general question of whether that type of committee can maintain the requisite confidentiality by reason of the nature of its proceedings."[34] The Committee's final recommendation was:

> Because legislation in this area will be of such import, and will introduce into the security intelligence system several entirely new elements, we recommend that a parliamentary committee be empowered to conduct a thorough review of the operation of the legislation after a period, perhaps five years, of experience with it. Such a review would go a considerable way toward ensuring that the legislation is working as Parliament intends it to operate.[35]

Conclusions

Much of the public discussion of Bill C-157 has centred around whether Canada really needs a security service, and whether such a service should have unusual powers. Both of these questions the Senate Committee, like the Government and the McDonald Commission, answered in the affirmative. These are not really in dispute, and whether or not Bill C-157, or something like it, becomes legislation, Canada will have a security service and it will exercise extraordinary powers. The challenge is to reconcile this agency and its activities with democracy. The proposals of the Committee go a long way towards correcting the flaws in Bill C-157. The major issues remaining are, first, the extent to which the agency should be independent of the Government; second, the role of Parliament and particularly parliamentary committees in controlling the agency; and third, whether the control system should extend to all security activities, or be limited to the one agency.

In my view, the Commission was more correct than the Committee on the first issue. The Minister should have full responsibility and answerability for security activities. He would, of course, still have the right to refuse to answer parliamentary questions because to do so would not be in the national interest, but he could not plead ignorance as an excuse.

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[34]*Ibid.*, para. 100.
[35]*Ibid.*, para. 111.

On the question of a special parliamentary committee, I feel the Senate Committee is more likely correct. There would be difficulty in making such a committee function effectively. This is the conclusion I reached in my study for the McDonald Commission.[36]

On the third issue, the scope of review, the Committee made no pronouncement. The Commission is surely correct here in proposing a broad mandate, so that all security activities, not just those of the special agency, are scrutinized.

One last point must be emphasized. So far, the House of Commons has not debated either the report of the McDonald Commission or Bill C-157. It will have to do so soon. The Goverument has acted as though it is scared to death of Parliament, and that Members are mischievous, naughty little boys who can't be trusted with serious issues like security. But the legislation will have to get through the House. The sooner the Commons is allowed to debate the problems of security, and examine them in depth in committee, the sooner a basis of understanding will be created in Parliament that will permit a security agency to operate within the law and be controlled by Parliament. It would also hasten the House of Commons' serious consideration of the issues. Parliament, not just the Government, will have a final say on both the legislation in general and the question of a special parliamentary committee in particular.

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On January 18, 1984, a new version of the Bill, C-9, *An Act to Establish the Canadian Security Intelligence Service, to enact an Act respecting enforcement in relation to certain security and related offences and to amend certain Acts in consequence thereof or in relation thereto,* received first reading in the House of Commons. It is substantially changed from Bill C-157, and adopts most of the recommendations of Senator Pitfield's Committee. Ministerial control and accountability in particular have been strengthened.

However, it is not likely that the Bill will get through Parliament in this session, or possibly ever. The N.D.P. are implacably opposed, while the P.C.'s have decided not only that the Bill is unacceptable in its present form, but also that they might conclude that the security service should remain within the R.C.M.P. With an election coming soon, the Liberal Government is not likely to push a piece of legislation that will arouse the ire of both opposition parties and of civil liberties groups as well. This leaves the security service in an unfortunate position, with an important job to do but no legislative mandate. The Government must accept the responsibility for

[36]Franks, *supra,* note 4, 67.

this problem, which in large part is a direct consequence of its failure to educate the House of Commons by refusing to allow it to examine in Committee the report of the McDonald Commission or the proposed legislation. Whether a Progressive Conservative Government would be more successful in resolving the conflicts between ideals and necessities remains also to be seen.