

APPENDIX

**TEXT OF McDONALD COMMISSION LETTER
TABLED BY SOLICITOR GENERAL**

14 May, 1980

Mr. Russell MacLellan, M.P.
Parliamentary Secretary to Minister of
State (Mines)
House of Commons
Ottawa, Ontario

Dear Mr. MacLellan:

My attention, and that of my fellow Commissioners, has been drawn to the following statement made by you on May 8, 1980, in the House of Commons, as reported in Hansard at p. 879:

"The laying of charges is not the responsibility of the Prime Minister or the Solicitor General, but a unique prerogative of the Attorneys General, federal and provincial, depending on the nature of the case. However, Mr. Justice McDonald has clearly indicated that he would prefer any such action to await his report . . ."

I am not aware that I have ever indicated that I would prefer the laying of charges to await the report of the Commission of Inquiry of which I am Chairman. My fellow Commissioners are also unaware of any of the Commissioners having said that.

We understand that the statement you read was based in part on the following passage in the transcript of public proceedings during the presentation by the Canadian Civil Liberties Association on April 17, 1980, at pages 25687-8:

"MR. ALAN BOROVY: Mr. Chairman, the proposal we had made a couple of years ago did not contemplate such findings in specific cases.

I quite appreciate that problem.

Our proposal was that the Commission should have recommended that the normal law enforcement processes go forward.

That was the recommendation we had sought.

Had they not gone forward, naturally, we could not have said anything to you about that.

But our hope is that, and the point of the submission then was that you would have used your best offices to encourage the normal law enforcement processes to go forward, and that would not have required specific findings in specific cases.

THE CHAIRMAN: It would have required a report by us and it would, therefore, require representations by counsel as to whether there was conduct not authorized or provided for by law."

In order to understand this passage, it is necessary to reproduce pages 25685 to 25688, a copy of which is attached. A reading of those pages will show that there I was attempting

to explain why, as the Civil Liberties Association had said, "the Commission has neither recommended a different course of action nor explained its omission to do so." The explanation boils down to this: Our terms of reference and the Inquiries Act require us to follow a certain procedure before we make a report. Only in a report can we make recommendations, including any recommendation in respect of prosecution. We should not be expected to follow a procedure which does not comply with the law.

I also pointed out that

"As far as systematic techniques are concerned, they are in the public domain and the appropriate authorities have been at liberty to investigate them in detail and reach their decisions as to whether or not to prosecute."

Beyond that it would be improper for myself and my fellow Commissioners to comment publicly or privately as to whether there should be any prosecutions, except in a duly presented Report.

I trust that you will bring this correction to the attention of those who may have understood that the position of my fellow Commissioners and myself was as indicated—i.e. that we "would prefer any such action to await his report". In fact, we express no preference one way or another.

Yours very truly,

David McDonald
Chairman

TRANSCRIPT OF COMMISSION PROCEEDINGS

MR. ALAN BOROVY: I think, Mr. Chairman, I was probably momentarily paralysed by the prospect of winning a million dollars and it may have clouded otherwise clear judgment . . .

The response I think would be this, that people presumptively should have a right to get lost if they so choose, and save and except for an imminent peril to life or limb and something of that kind, we would be concerned that this could erode the self-reporting mechanisms under the Income Tax Act, which in itself could lead to some pretty intrusive interference into people's lives.

THE CHAIRMAN: The last is a comment rather than a question.

I would like to refer to your Forward and in particular to the last two sentences of the third paragraph in which you say:

Despite scores of unlawful acts by the RCMP which were admitted as far back as October, 1977, not a single charge has been laid or disciplinary measure imposed. To our knowledge, the Commission has neither recommended a different course of action nor explained its omission to do so.

I would like to observe this: