

Threatens Civil Liberties

"Foreign influenced activities....detrimental to the interests of Canada" can also come under the CSIS eye. Robinson fears such a section could be used to conduct wholesale spy missions on peace groups whom some allege, are infiltrated by the Soviet Union.

One further definition says a threat could include "activities directed....toward or intended ultimately to lead to the destruction or over-throw of the constitutionally established system of government in Canada."

"Stanley Knowles and others want the Senate chamber abolished," says Robinson, "this would be an activity leading to the destruction of our constitutionally established system of government."

McDonald Commission Ignored

The government's proposal had been on the drawing board for almost two years before it reached the house of Commons. Its origins go back, however, to the mid-1970's when the nation's media reported dozens of incidents involving RCMP "wrongdoing". Francis Fox, the Solicitor-General at that time, said these revelations were "isolated incidents", but when senior members of Canada's police force publicly disagreed with Fox, the government established a Royal Commission to investigate.

Mr. Justice David McDonald was appointed to head the Inquiry in 1977. Four years later, at a cost of \$10 million, the McDonald Commission made its report.

Among the major suggestions to government were the proposals to establish a civilian spy agency, separate from the RCMP, stricter accountability of the agency to the government, and finally adherence to the rule of law by the security service, i.e., no more illegal break-ins, etc.

Robinson says the government accepted the idea of a separate security service but ignored the other two recommendations.

The Security Service is given the right to take "such reasonable actions as are reasonably necessary to enable them to perform the duties and functions under this Act."

Svend Robinson fears such a section could be used to conduct wholesale spy missions on peace groups whom some allege are infiltrated by the Soviet Union.

Robert Kaplan says this section should not alarm anyone. The kind of illegal activities it allows the CSIS to undertake include "minor infractions" such as falsely registering in hotels or automobile speeding.

Alan Borovoy says, "If that's all Mr. Kaplan intended, why doesn't the bill say so?"

He says "no one is going to mount the barricade if the security service occasionally violates some minor regulatory law," but "many will be distressed if the service feels free to violate more serious laws which involve elements of moral turpitude."

Robinson says the RCMP argued strongly for this section. The Burnaby MP says he believes the McDonald Commission was correct. When it urged that the "rule of law must be paramount," and that the RCMP should not be allowed to break the law any more than the average citizen."

But the Federal Solicitor-General Kaplan says what is "reasonably necessary" for the CSIS to carry out its duties will not be left to the Security Service alone to determine. The activities of the agency will be subject to the scrutiny of the courts.

Alan Borovoy says this is not good enough. Bill C-157 says any CSIS law-breaking must be reported to the Solicitor-General. The problem, says Borovoy, is that there is no onus on the Solicitor-General to prosecute if the matter falls within federal enforcement jurisdiction, or to relay the information to whatever provincial attorney-general may have prosecutorial authority. This means the Security Service employees or directors who break the law may never be brought to court.

Security Agency Can Veto Government

Robinson says the government has turned its back on the McDonald Commission recommendations to make the spy agency strictly accountable to elected politicians. Section 6 of the Bill gives explicit power to the director to override certain decisions made by the minister in charge of the agency.



Robinson says this is "unbelievable in a democratic society." "Let's say you're the minister and you don't think a particular law-abiding union should be spied upon. You tell the director to lay-off. Well, he can tell you to lay-off. Now the Solicitor-General can avoid all responsibility for these security service actions," he says.

An August editorial in the *Winnipeg Free Press* also pointed out the reverse situation might be true.

"If the Minister wanted an investigation and the director was opposed, the operation would not happen."

Robert Kaplan says the reason for this section is to stop the minister or his political colleagues from calling off investigations of themselves. It also prevents the

minister from initiating investigations of persons who are not security threats in the opinion of the CSIS.

"But this assumes that the director's motives and inclinations will usually be wiser than those of the minister," says the *Free Press*. The paper says "when idiotic and wholly unjustified intrusions upon the privacy of Canadians come to light, the minister will stand up in the Commons and declare that he has no role in the choice of targets....the matter is out of his hands."

A Senate Committee chaired by former Liberal mandarin Michael Pitfield has also recommended changes to the Bill. The Committee says the Bill makes it too easy to get judicial warrants for the use of intrusive investigative techniques such as wiretaps and electronic bugs.

935 applications for wiretaps were made last year and there was not a single rejection.

Conservative Senator Nathan Nurgitz, a member of the committee, says the Bill sets no limits on the time such warrants would last. Nurgitz told the *Toronto Globe and Mail* "it's a little frightening" to think a warrant could run for a year without a judge reviewing the case to see if the intrusive technique is still required.

Nurgitz says Bill C-157 would allow agents of the security service to go "judge shopping" for warrants. If one Federal Court judge turned down their application they could approach another, until they found one who was willing to grant their request.

Under the Criminal Code in Canada, if a police officer is turned down by a judge in seeking a warrant, he or she must reveal that fact to the next judge that is approached. Under Bill C-157, Security Service agents would not have made disclosures about a previous judge's decision.

Alan Borovoy also says the Bill does not require any judicial warrant for "one of the most intrusive and dangerous of all surveillance techniques" - the undercover informant.

Robinson says he is not convinced requiring judicial consent for wiretaps or electronic bugging will prevent abuse, because judges rarely turn down police requests as it is.

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Government Opposition and Bill's Future

The NDP have rejected the Bill outright. Svend Robinson says "not many would disagree if the security service's role was to detect KGB agents" or violent plots to overthrow the government but in the "guise of doing this we have created a monster."

The Conservatives have not taken a clear position. In his campaign for the Tory leadership Brian Mulroney said "I'm suggesting we have to be extremely prudent in agreeing to any concoction the Liberals throw at us in regard to our civil liberties."

The Tories have said they disagree with separating the security service from the RCMP.

Still others, like Elmer McKay who gave up his Nova Scotia seat, to allow Brian Mulroney his stepping stone into Parliament have complained the Bill gives too many safeguards for civil liberties.

Robinson says the Bill is likely to "die on the order paper." He believes the government will change the Bill slightly to appease a few conservative concerns, but will basically be left intact.

Prophetically he says, he expects the Bill to be reintroduced in 1984.

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