

important debate, during the course of my remarks I should like to deal with some of the historic and perhaps constitutional questions involved in the evolution of security and of the RCMP in this country.

It has become obvious to all of us over the years that in examining principles of ministerial responsibility, or the lack of it, with particular reference to security, which is covered in this motion, how unnecessary the growth of undesirable or misguided security methods were, had the government acted conscientiously and efficiently on the report of the Mackenzie Royal Commission on Security tabled approximately ten years ago. Also, it is obvious how stubborn and perverse this government has been over a long period of time in refusing to be frank with parliament, even when it became evident to some of us that something in security matters was going terribly wrong.

Responsible ministers, which include not only solicitors general, were either curiously anxious not to know what was going on, or they lacked any desire to correct the situation. Therefore the present conditions are caused, in a large part, by the negligence and shortsightedness of ministers of the Crown and are exacerbated by the indiscriminate use of section 41(2) of the Federal Court Act, which has roused the ire of the chief law enforcement officers of the provinces who resent the withholding of information which is rightfully, in their opinion, within their jurisdiction.

Another element has been the complacency of the Prime Minister (Mr. Trudeau) who said on February 7, 1977, when I questioned him about government files on millions of Canadians and the necessity of providing Canadians with access to their files and more freedom of information, the following:

I for one as a Canadian would not admit we have lesser rights than the Americans. They may have more abuses there and that is why, perhaps, they have to have corrective measures.

It appears the Prime Minister's conclusions were wrong. Since that day we have seen that we need corrective measures as well. It was obvious to many of us, apparently before it was obvious to the right hon. Prime Minister.

Security matters in this country, besides being in a state of disarray because of poor judgment and lack of attention on the part of the government, are also complicated by very real constitutional problems. I am sure the Solicitor General (Mr. Fox) and the Minister of Justice are very aware of that.

Both the Attorney General of Canada and the Solicitor General of Canada are concerned with the operations of security. While I would not attempt to specify all of the powers possessed by these ministries, there is a doubt as to whether their powers extend into the administration of justice given to the provinces by section 92(14) of the British North America Act.

If such powers do not extend into this widely defined provincial prerogative, serious difficulties arise; one must look at the Official Secrets Act, for example, before prosecution can be entered, the authority of the Attorney General of Canada is required. An examination of this act clearly reveals that it comes within the meaning of the administration of

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justice. Furthermore, certain offences contained therein are duplicated in the Criminal Code, which is the responsibility of the provinces. In the latter instance, no such authority for prosecution is required. I wonder precisely where the Attorney General of Canada legally derives his power to override provincial jurisdiction. Also this act provides authority to appoint persons with the powers of peace officers, with no jurisdictional limitations imposed by order of the governor in council. I am not satisfied where it is clearly specified in the law that the governor in council can override the exclusive powers of the provinces in the field of the administration of justice.

We should consider as well another very important statute as far as civil rights in this country are concerned, which is the Protection of Privacy Act. The definition of subversive activity in that statute is very interesting. I seem to recall, when the term itself was put forward, that it was met with opposition. I suspect it was returned to the authorities to come up with some more acceptable forms of definition which finally found its way into the act. If we examine the definition of this term and translate the actions into offences, practically every one will be contained in the Criminal Code. This means that subversive activity also comes within provincial jurisdiction, yet it is the Solicitor General who is responsible for issuing warrants.

This matter requires some explanation. It has been suggested over the years that an assumption has grown up without challenge that the RCMP is constitutionally responsible for national security or internal security, although both terms have no real meaning in law. The only term I can find is "peace and order", and certainly the RCMP is not by definition responsible for that, although they have been its foremost defenders over the years. The assumption has wormed its way into this act as it has into the Official Secrets Act, and if it cannot be substantiated by constitutional law, it can be establishing a very dangerous precedent.

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One must take a very hard look at whether the role of a security service should include an enforcement function. Perhaps to be consistent, if it is to be a federal responsibility, it should not have this power, which brings it back into an even more apparent conflict on jurisdictional grounds.

I believe that parliament should seriously consider that the term "defence", set out in section 91(7) of the British North America Act, should be defined to include the term "security intelligence" which should also be defined. This would place the matter firmly at the federal level and overcome the jurisdictional problems which are inherent at this time.

I think it is obvious as well at this point that military intelligence activities, by virtue of section 91(7), have a far clearer and more legitimate function than the security activities of the RCMP, and this to my mind is an unfortunate situation. If section 91(7) were amended in this way, the Solicitor General would be on firm legal ground for the issuance of warrants under the Protection of Privacy Act.

While parliament may legislate laws for peace and order, I submit that it has constitutionally no power to administer