

Security Intelligence Service

Some people have suggested that, because subversion is so difficult to distinguish from legitimate dissent, we should exclude subversion from the mandate of a security service; but this is surely dangerous. Genuine subversion is a genuine threat to national security, and we must be in a position to deal with such a threat. As the Senate Committee observed:

—it was suggested by some witnesses that subversion should not be a concern of the CSIS at all, specifically because it is so hard to distinguish from legitimate activities. The Committee does not agree with this approach. Even though the limits of subversion are hard to define, it can represent a threat to the security of the state. A state should be in a position to protect itself from illegitimate attempts to weaken its institutions.

● (1250)

Therefore, I have tried to formulate a definition that focuses precisely on that aspect of subversion which can seriously endanger a democratic society. The McDonald Commission emphasized, and I quote:

The key element in the subversive activity which is the proper subject of security intelligence activity is the attempt to undermine or attack, through violence or unlawful means, the basis values, processes and structures of democratic government in Canada.

The definition I have proposed accurately reflects that key element, and just that element, of subversion.

[*Translation*]

I am convinced that the mandate described in the Bill amounts to the best possible protection of civil liberties in Canada. Never in any instance will it be possible to equate protest or non-violent and legitimate unrest with a threat to national security. Still, to avoid any possibility of misleading interpretation, no matter how remote, we have clearly indicated in the Bill that no one can be investigated by the Service only because he or she has taken part in activities related to lawful advocacy, protest or dissent.

[*English*]

I should also point out that the mandate, as reworded in the Bill before you, limits all security investigations to those that are "strictly necessary", in the interests of national security. This is a clear signal that the mandate is to be interpreted narrowly. Only if it is demonstrably necessary for national security will an investigation be supported by this mandate.

While the mandate defines the job the security service is expected to do, we must also tell the service how this job is to be performed. Bill C-9 sets out the specific powers of investigation available to the service, and it sets out the conditions which will govern the exercise of these powers. These powers are admittedly considerable, and many people are understandably uneasy about giving any agency this capacity for investigation. But such a capacity is necessary. The McDonald Commission, whose unquestioned concern for the basic rights and freedoms of Canadians permeates its report, was equally concerned that the security agency be given full investigative powers appropriate to its legitimate and mandated function. The Commissioners observed, and I quote:

Because of the secrecy maintained by those who pose the most serious threat to Canada's internal security, the security intelligence agency must be authorized to employ a variety of investigative techniques to enable it to collect

information. The means available to it must range all the way from studying open sources of research material and obtaining information from citizens, police forces and government agencies . . . to using much more covert and intrusive methods that may involve the use of powers not available under law to the ordinary citizen.

The Senate Committee reached the same conclusion last year. It said:

While the utility of any given technique varies with the circumstances, to absolutely deny one or the other to the agency would be to unreasonably restrict its operations. The Committee is aware of the dangers inherent in allowing such powers to be given to anyone. But . . . the proper way to avoid abuse is to restrict (these powers) to specific and exigent circumstances . . . Thus mail-opening, for example, will be available but only in a proper case where the agency meets a strict set of conditions, and where the prescribed mandate and functions of the agency allow it.

In weighing the implications of these powers, Members should note that Bill C-9 sets out an exceptionally strict series of conditions for the use of these powers, and for the first time these powers will be subject to judicial control through the warrant process. I note that the imposition of judges as a safeguard on the use of these powers has no counterpart in present arrangements. It represents a great step forward in the protection of rights. The service will not be allowed to exercise any intrusive powers without a judicial warrant, and every application for a warrant must first be approved by the Solicitor General. A judge who issues a warrant must first be satisfied that its use falls within the mandate of the service, other investigative techniques have been tried, or that there are special reasons why the technique in question is uniquely necessary.

There are still more conditions which would help to ensure that these powers are not abused. For example, to prevent "judge-shopping" all warrant applications would have to include details of any previous applications, and all warrants would have a maximum time limit of one year. Taken together, these conditions represent a substantial set of safeguards against the potential for abuse in intelligence operations, and, I might add, these safeguards have no counterpart in our existing arrangements. They are a great step forward in the protection of rights.

Bill C-9 also introduces a new set of provisions for monitoring and reviewing security intelligence operations. The Solicitor General will be fully responsible and fully accountable for the security service, as in the present system. But the Bill would introduce two additional elements to ensure that the system as a whole is operating as intended. These are perhaps the most innovative features of our proposed legislation, and I believe they are vital as an effective and credible guarantee that intelligence operations remain within the rule of law. Compared to present arrangements, they are a further protection of the rights of Canadians.

First, there will be an Inspector General, who will monitor and review the operational activities of the service. He will have full access to information on intelligence operations, and his job will be to ensure that existing policies and procedures are being observed by the service. The Inspector General must advise the Minister of any activities he feels are unauthorized or unlawful, or which involve an unreasonable use of investiga-