

C O N F I D E N T I A L

September 30, 1983

**Summary of Proceedings  
of  
Special Committee of the Senate on Bill C-157  
Thursday, September 29, 1983**

Senators Attending: Balfour, Buckwold, Flynn, Frith, Godfrey,  
Lapointe, Nurgitz, Olson, Pitfield, Riley

Witnesses: Commissioner R.H. Simmonds, R.C.M.P.

Mr. Jean Keable, Lawyer

Parti-Québécois

Mr. Sylvain Simard  
Vice-Chairman of the Parti-Québécois  
and Chairman of the National Executive  
Council

Mr. Pierre Cloutier  
Chairman of the National Committee of  
Justice of the Parti-Québécois

Mr. Alain Mongeau  
Chairman of the National Legal  
Commission of the Parti-Québécois

Mr. André J. Bélanger  
Vice-Chairman of the Montreal-Ville-  
Marie Region of the Parti-Québécois

Commissioner R.D. Simmonds

Commissioner Simmonds had no opening statement to deliver, indicating simply that he was there to answer questions of a factual nature. Initially, Senator Kelly asked Commissioner Simmonds for his opinion about the viability of separating the Security Service from the RCMP and creating a civilian intelligence service. This led to the interjection of Senator Olson to the effect that officials should

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not be asked to comment on matters of policy. These questions should only be asked of Ministers of the Crown. Commissioner Simmonds added that he was in fact rather proscribed in what he could say about policy matters. He offered the observation, however, that a security intelligence service could be established in line with a number of models currently used around the world, all of which work reasonably well. Although the creation of a civilian service in Canada was perhaps no panacea to all the problems of the past, he indicated that he was fully committed to the present government policy as expressed in Bill C-157.

Senator Kelly asked Commissioner Simmonds if there existed any incompatibility between the training and duties of a police force and the carrying out of security investigations. Commissioner Simmonds responded by emphasizing that had the Government decided not to separate the Security Service from the RCMP, the carrying out of security work by the police force was a model which could be designed to work adequately and effectively. With respect to training, Commissioner Simmonds pointed out that the basic recruitment training that a policeman undergoes is certainly not adequate for the carrying out of security work, in much the same way as it is inadequate for the carrying out of drug or commercial crime investigations. The RCMP has been engaged in the past, and will continue to be engaged in providing more specialized training beyond the recruitment stage. Senator Pitfield wondered what type of training and experience was reflected in current Security Service personnel. Commissioner Simmonds indicated that in terms of assessment and analysis of data collected from investigations, a considerable amount of work was done by civilian employees with a variety of experience and education, who operate in tandem with police personnel in the RCMP. Approximately 25% of the personnel of the Security Service of the RCMP is civilian.

Senator Buckwold asked whether any difference in pay and benefits existed between the civilian and police components of the RCMP. Commissioner Simmonds replied that pay and benefits for police personnel were based on a national average for people involved in police work. RCMP personnel who were classified at the EX level would receive pay and benefits in line with general government standards.

Senator Buckwold also asked whether there existed a division of opinion in the RCMP with respect to the issue of separation of the Security Service from the RCMP. The Commissioner suggested that in the years leading up to the establishment of government policy, a great deal of debate took place within the R.C.M.P. and a division of opinion was quite evident, with many opposing the idea of separation.

however, once the government policy had been announced, the majority sentiment was one of acceptance and a desire to "get on with the job". In this regard, Senator Nurgitz asked if morale in the Security Service was bad as a result of the long period of uncertainty and the dissatisfaction over pay and benefits. Commissioner Simmonds believes morale to be good, and not adversely affected by uncertainty over pay and benefits.

Senator Lapointe asked whether the RCMP see national security work as a negative factor in maintaining the good image of the RCMP. Commissioner Simmonds was of the view that the security sector of the RCMP duties has never been viewed in this way.

Senator Flynn asked about what the present policy and procedure was with respect to reporting evidence of criminal activities uncovered in a security investigation. Commissioner Simmonds pointed out that wherever there is a possibility of criminal activity being involved a joint team is established composed of RCMP members from the Criminal Investigation Branch and the Security Service. The two sectors in the RCMP thus work together as the investigation proceeds. Once separation takes place there will be a need to maintain close liason with the C.I.B. of the RCMP. In this regard, Senator Flynn wondered if there might be a greater possibility of conflict between a separate civilian intelligence service and the RCMP. Commissioner Simmonds did not seem to agree with this suggestion, pointing out that, in fact, the existence of a distinct police law enforcement made in the RCMP could have a balancing effect with respect to the civilian security sector by ensuring that the civilian service did not overstep its mandate and stray into the area of law enforcement.

Turning to Part IV of the Bill, Senator Pitfield asked why it was necessary, from an operational point of view, to provide for a primary investigative role for the RCMP as found in clause 55. Commissioner Simmonds referred first to section 18 of the RCMP Act which, in his opinion, gives the RCMP the authority to investigate any offence against federal legislation anywhere in the country. However, as a matter of practice, the RCMP does not exercise this plenary authority. In the area of national security investigations, Commissioner Simmonds had no knowledge of past conflicts between the RCMP and local or provincial police forces, although conflicts have arisen in the ordinary criminal investigation sector. The present system of investigation allows for and depends upon cooperation with local police forces and this cooperation has facilitated security investigations in the past. He cited no specific examples.

Senator Pitfield wondered whether the wording of clause 55 (by referring to the "apprehension" of offences) was meant to give the RCMP some type of locus standi in matters relating to the protection of internationally protected persons. Commissioner Simmonds agreed that this in part was the policy behind clause 55.

Senator Nurgitz asked whether section 18 of the RCMP Act would not give the investigative authority to the RCMP to do those things mentioned in clause 55. Commissioner Simmonds agreed that section 18 is very broad; in fact, it is broader than clause 55 of the Bill. However, Commissioner Simmonds pointed out that with respect to crimes committed with a political motive, the use of investigative techniques such as wiretapping had to be approved by a provincial attorney general. It was important that the RCMP have the possibility to apply for such warrants via the federal Attorney General where it was not appropriate to apply via the provincial Attorney General.

Senator Godfrey asked whether the RCMP viewed a person's homosexuality to be a factor which disqualified him or her from a security clearance because of presumed unreliability. Commissioner Simmonds replied that a person's homosexuality was not in itself a bar to receiving a security clearance, and that any statements in the past that conveyed this message were in error. He did add, however, that in cases where a person is guilt-ridden and hides his sexual orientation, there may be a danger of blackmail. In this sense, a person's homosexuality might be a factor relevant to assessing reliability.

In answer to questions of Senator Riley, Commissioner Simmonds explained that good working relations exist between the RCMP Security Service and police forces across the country. Given that present members of the Security Service will form the basis of CSIS, Commissioner Simmonds is optimistic that these good relations can be maintained and developed further in the future.

The session ended with discussion about pay and benefits and, in particular, the issue of RCMP pensions and the bar to "double dipping" by members of the present Security Service who transfer to CSIS. At one point, Senator Buckwold wondered if the secondment process might be a solution to the controversy involving "double dipping". Commissioner Simmonds was unsure but promised to supply a written reply to the Committee dealing with the issue.

Action Required

Senator Pitfield wishes to know if the RCMP pension fund is completely self-financing, i.e. financed only through contributions by employees and the employer. This factor may affect the degree of indignation that would be felt if a former member of the RCMP was allowed to collect a pension while working at full salary for the new CSIS.

Commissioner Simmonds offered to submit a written brief on the matter of pensions.

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Mr. John Keable

Summary of Statement

Mr. Keable appeared before the Committee strictly on a personal level but his comments were based on his work with the Provincial Commission of Inquiry in Quebec from 1977 to 1981. He summarized major findings of the Keable Commission as follows:

- (1) Rights of citizens were poorly protected;
- (2) Parliamentary ministerial controls were unsatisfactory and inadequate;
- (3) There was a lack of clear directives relating to security; and
- (4) False and incomplete information had been translated to the provinces and there was an absence of provincial involvement.

Mr. Keable reviewed specific aspects of Bill C-157 to determine how those four basic issues had been resolved:

2(d) and (c)

Although he found 2(c) to be generally more extensive than required it was more or less acceptable. He found 2(d) to be inappropriate and unacceptable. The English text

seems to show that certain determined conditions have to exist before there is a threat, while the French text requires the existence of cumulative conditions. Mr. Keable wondered why the definition of subversion provided by the McDonald Commission had not been used since that definition has nuances that 2(d) does not have and is better.

Part I

Mr. Keable noted that many people were overjoyed that the recommendations of the Mackenzie and McDonald Commissions were being followed up and that a separate security agency was being created. He stressed that Mackenzie and McDonald had arrived at the same conclusions - a separate agency - for totally opposite reasons. However, Bill C-157 in section 55 gives the RCMP the main responsibility for exercising duties assigned to peace officers in anything to do with security. The actions of the RCMP and security service members according to section 55 extends to the apprehension of such an offence. Therefore section 55 maintains the possibility of active involvement of the RCMP on the apprehension of a crime.

6(3)

Mr. Keable found section 6(3) particularly surprising in that the minister is subject to the decisions of the Director. He felt that now the necessity of not knowing will become the duty to not know and if that is the case what is the point of having 6(3). Mr. Keable further stated that the risk of political partisanship will always be there but the Minister should assume the risk.

12

Mr. Keable stated that section 12 created a new offence and that it is aimed at all citizens. He found the guarantee of unanimity worrisome since informants generally receive special status and can abuse the whole system. He further wondered whether citizens and journalists should have to carry the weight of such a threat.

14

Mr. Keable continued by saying that section 14 broadens the mandate of the service and that may be necessary but it should be remembered that the RCMP still has a role to play through section 55 of Bill C-157.

17

Mr. Keable stated that section 17 gives rise to questions regarding security assessments which are outside of any legal control under section 22. He stated that it is difficult to know from the Bill whether they can or cannot be carried out or whether or not they can be controlled. His suggestion was that it is a matter that can be easily added to the Bill. For example, a statement inspired by 14(2) which says this act does in no way allow the use of intrusive means to carry out security assessments or if intrusive means are necessary then security assessments should be subject to the control of Section 22.

18 and 19

Mr. Keable was concerned that the new service could reach agreements with provincial and municipal police forces without the provincial Attorney General's knowledge. He suggested that Bill C-157 should clearly make it an obligation and a duty to inform the Attorney General of the Province of its intentions.

21(1)

Mr. Keable stated that regardless of the various legal approaches that had been given he feels that section 21(1) is giving a new license to a group, for actions that are not clearly defined at the outset. He was convinced that this section gives more protection than either section 25 of the Criminal Code or section 26 of the Interpretation Act. He felt that the Waterfield principle seems to be rather far from the normal current of activities and he preferred the approach of McDonald and the Canadian Bar Association.

Part II

Mr. Keable went on to say that if Part V of the Bill leaves open the possibility of destabilization tactics then sections 22 and 23 of C-157 now introduce the possibility of legally carrying out operations such as the PUMA operation.

21(1)(b)

He continued with 21(1)(b) saying that warrant mandate must be limited in duration. It may be renewable but a judge must be shown a number of factors. Stricter rules must be introduced based on the recommendations of the Canadian Bar Association, the McDonald Commission and the Attorney General of Canada.

Part III

Mr. Keable wondered why, if the Inspector General has access to all information and has direct access to the Director, would he not have staff similar to that of the Review Committee in section 32.

According to Mr. Keable the Bill should state that the report of the Inspector General under 29(2) should be sent to the Attorney General of the provinces in question.

Mr. Keable agreed with other witnesses that the Review Committee should be made up of more people, with, at least on an advisory basis, representatives of the Attorneys General of the provinces.

Under section 43, he did not see the need to make it law that the Review Committee notify the Director of its arrival. His point was that if the Director General has something wrong why should the Review Committee state that it is coming to review.

Part IV

Mr. Keable continued by saying that it was clear that in Part IV the provinces lose all jurisdictional powers as far as the fights against subversion and legal proceedings are concerned. This primacy of the federal power could be dangerous and Mr. Keable reminded the Committee to be aware of the historical role of the Senate in protecting the rights of the provinces. Mr. Keable referred to the FLEUR project that has to do with patriating a certain number of offences which until now came under the provincial Attorneys General.

Mr. Keable pointed out that earlier witnesses had stated that management would be easier in the hands of one single government. He provided three examples to demonstrate that communications between the federal Solicitor General and the Provincial Attorneys General were strained due to federal reticence.

Mr. Keable continued by referring back to the four issues he began with and summarized his reactions to Bill C-157 by stating that:

- (1) the rights of the citizen would still be ill-protected by Bill C-157;
- (2) parliamentary control would still be inadequate;

- (3) directives to the Security Service would be clearer and more satisfactory in that there has been a move towards the creation of a separate service, and;
- (4) the provinces roles in national security would be destroyed by Bill C-157.

He briefly stated that the winners would be those who are members of the service, members of the RCMP and the Solicitor General and Attorney General of Canada.

The McDonald Commission handed over a much broader role to the provinces than does Bill C-157. Mr. Keable told the committee that they must not underestimate the possibility that service agreements might hand over impossible or special investigations to other forces and if that were the case the Review mechanism would not work - the Inspector General and the Review Committee could not go to see what was being done by the provincial or the municipal police forces.

Furthermore if provincial police forces were to carry out investigations on behalf of the federal security service the Attorneys General of the provinces would not be able to control their own police forces. The only solution he stressed, would be natural reciprocity and cooperation between different levels of government.

Mr. Keable concluded that Bill C-157 derogates seriously from the major direction of the McDonald Commission, it is in opposition to things Mr. Keable has seen in the provinces and its limits have not been proven to meet the requirements in the Charter of Rights.

The meeting was adjourned after Mr. Keable's presentation and will be recalled at a later date to permit questioning by the Senators.

### Parti-Québécois

#### Summary of Statement

Each of the witnesses read from a prepared brief and responded to questions regarding their specific areas of expertise.

Mr. Simard commenced by saying that they had not come in the name of Quebec or for all Québécois but on behalf of the members of the Parti-Québécois. He made it

clear that he did not protest against the basic principle of the creation of a separate security agency but did contest the contents of Bill C-157. Mr. Simard's main points were that the Bill goes against the McDonald Commission recommendations and it intends to legalize criminal acts that will continue to be perpetrated against the Parti-Québécois and its members.

Mr. Belanger highlighted difficulties that he saw with sections 2 and 14. His main concern was that since the Parti-Québécois worked towards the independence of Quebec and in consequence the destruction of the constitutional government of Canada would its members be considered marginal anti-democratic and illegals and would they fall under the definition of threats?

His second main point was to state that section 14 was aimed directly at the Parti-Québécois and its members and that under section 14 the Service could easily imagine reasonable grounds to believe that the Parti-Québécois members were a menace to the security of Canada and use, without impunity, all the powers provided to them by Bill C-157.

Mr. Mongeau discussed the historical tradition of the provinces right to administer justice and his fears that Bill C-157 would take away that right and give total authority to the federal security services. Mr. Mongeau reviewed the Di Iorio (1978) case and the Hauser (1979) case to explain his points.

Mr. Cloutier presented his concerns with the Bill and he felt that his concerns resulted primarily from the federal governments unilateral centralist attitude toward security.

In reviewing the McDonald Commission Mr. Cloutier noted a number of points which are the following:

- (a) Part IV of Bill C-157 seems to go against the recommendation of the McDonald Commission to include the provinces in matters of national security;
- (b) the provinces were not consulted in determining the definition of threats. The McDonald Commission made it clear that the federal government did not have the right under the pretext of national security to define on its own the needs of Canada on matters of security;

- (c) the Review Committee was not a bad idea, however, the Bill says the members would be named by the Governor in Council after consultation with the heads of the official opposition parties. The McDonald Commission states this should be done after a vote by the House of Commons and the Senate.
- (d) the McDonald Commission suggested the creation of a joint Senate and House of Commons Committee to examine the activities of the Service. Bill C-157 stays remarkably quiet on that matter. Such a committee should have powers of surveillance over all the security and intelligence sources including the military security agencies.
- (e) With regard to section 21 the McDonald Commission suggested that the Criminal Code be modified as well as other pertinent laws and that the federal government negotiate with provinces to obtain certain modifications to provincial laws to achieve the same end.

Mr. Cloutier then stated that the combination of section 22 with section 14(3) was unacceptable, discriminatory and absurd. He was concerned that the service could open files and gather information based on suspicions only.

#### Questions to the Witness

Senator Lapointe explained that Bill C-157 was needed in order to avoid acts such as those that occurred in 1970. Mr. Cloutier responded that the structure was an improvement but the content was not satisfactory.

Senator Lapointe questioned Mr. Cloutier as to whether or not he felt the controls in the Bill were adequate. Mr. Cloutier explained that he was in favour of the McDonald Commission recommendation that there be a mixed joint committee of the Senate and the House of Commons to review the service's operations.

Senator Lapointe went on to point out that the Bill was intended to protect the country from unilateral independence advocates. Mr. Cloutier responded that it was too vague and that the word violence should be added.

Senator Pitfield requested that the witnesses define a democratic system in contrast to a constitutionally established system. Senator Pitfield felt that a constitu-

tionally established system was a much more precise definition. Mr. Cloutier agreed that it was a very difficult point and understood why the drafters had been so vague. However, he stated that now the concept is so broad that it includes the ideology of the Québécois and therefore is unacceptable.

Senator Frith asked for and received several clarifications of the witnesses submission.

Senator Frith wondered if the words "through violent means" were added and the word "constitutional" changed to "democratic" would that ease the witnesses concerns? Mr. Cloutier responded that a more specific and intelligent definition might lead to a discussion.

Senator Riley pointed out that the Bill was aimed at any group that constituted a threat to the national security of Canada. However the witnesses insisted it was aimed directly at the Parti-Québécois and its members. Senator Lapointe went on to say that section 14(3) protected groups like the Parti-Québécois. The witnesses responded that it depended on how the Director interpreted section 6(3) and that this Bill was a permanent War Measures Act. Senator Pitfield disagreed and went on to ask further questions as to why the McDonald Commission's definition of subversion was preferred when it seemed to have a wider definition than 2(d). The witnesses explained that they were not prepared to redraft the Bill but they were generally in agreement with the McDonald Commission's work. After a general discussion the meeting was adjourned.

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