
By

JOSEPH THOMAS FLUKE, B.A.

A Thesis
Submitted to the School of Graduate Studies in Partial Fulfilment of the Requirements for the Degree Master of Arts

McMaster University

(c) Copyright by Joseph Thomas Fluke, February, 1993
MASTER OF ARTS 1992
(Political Science)

McMASTER UNIVERSITY
Hamilton, Ontario

TITLE: Section 2(d) in Question: Debating the Counter-Subversion Function of the Canadian Security Intelligence Service, 1986-1991

AUTHOR: Joseph T. Fluke
B.A. (McMaster University)

SUPERVISOR: Professor Kim Nossal

NUMBER OF PAGES: v, 139
ABSTRACT

Subversion, the same as espionage, foreign influenced activities, and terrorism represents a unique threat to national security. It has been included within the security mandates of several western democracies such as Great Britain, Australia, New Zealand, and the United States. In Canada, subversion and the investigation of its activities have played a significant role in the history and development of the country's security and intelligence organizations. In 1984, the Canadian Security Intelligence Service Act became law, and paragraph 2(d) of the threat definitions section of the Act was intended to allow the Service to investigate subversive activities.

The debate over subversion as a threat to Canadian national security began in 1987 with the findings and recommendations of the Security Intelligence Review Committee's 1986-1987 Annual Report which questioned the validity of the counter-subversion branch of CSIS. In 1990 the debate continued when the Five-Year Parliamentary Review Committee of the CSIS Act recommended to the Solicitor General of Canada that Section 2(d) be repealed from the legislation. The Committee's decision was based primarily on the belief that the other threat definitions of the Act could adequately cover the subversive threat in Canada.
Subversion is ideologically neutral and even though a particular organization may decrease in political significance the methodologies of subversion remain constant, and available to any movement on either the left or right of the political spectrum. Paragraph 2(d) therefore remains an integral part of CSIS' overall mandate and without it the Service would be incapable of advising the government as to the true extent of the subversive threat against the constitutionally established system of government.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>PAGE NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>I. DEFINING SUBVERSION</td>
<td>13</td>
</tr>
<tr>
<td>II. SUBVERSION: THE CANADIAN EXPERIENCE</td>
<td>37</td>
</tr>
<tr>
<td>III. THE DEBATE: SUBVERSION AND PARAGRAPH 2(d) OF THE CSIS ACT</td>
<td>67</td>
</tr>
<tr>
<td>VI. THE SPECIAL PARLIAMENTARY REVIEW COMMITTEE'S RECOMMENDATION TO REPEAL PARAGRAPH 2(d) AND THE GOVERNMENT'S RESPONSE</td>
<td>90</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>116</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>136</td>
</tr>
</tbody>
</table>
INTRODUCTION

Subversion poses a threat to national security because of the fact that it targets the system of government within a particular state. It can encompass a wide range of activities from acts of political protest to violent revolution. Determining the inner and outer parameters of subversion has created problems for some liberal democracies. At the inner limit of the spectrum its activities may closely resemble legitimate political dissent while at the other extreme the activities may be viewed as acts of terrorism. Subversives threaten national security because of their ultimate intention to overthrow the existing political system. Subversion should not be defined or identified solely on the basis of its activities, but rather its objective. It is not tied to any specific ideology in that its methodologies can be adopted by individuals or organizations on either the right or left of the political spectrum.

Individual states are free to determine or set the parameters of subversive activities. In certain western democracies such as the United States, Great Britain, Australia and New Zealand, subversion has been narrowly defined and the investigation of its activities by state security agencies restricted to illegal, covert, or violent attempts to subvert the political system.
In Canada, subversion and the investigation of its related activities has played a prominent and significant role in the history and development of its security and intelligence organizations. During the period between World War I and World War II Canadian security and intelligence concerns centred around labour unrest, anarchism and the expansion of the communist international. The mandate for the investigation of these threats was given to the Criminal Investigation Branch of the RCMP. In 1946 the defection and revelations of Igor Gouzenko, the cipher clerk at the Soviet Embassy in Ottawa provided new governmental appreciation of the need for greater security precautions, especially within federal institutions. The government reacted by approving the formation of the Special Branch of the RCMP and empowered it to investigate espionage, subversion, and to take measures to ensure federal government departments were staffed by loyal and trustworthy civil servants. Under this mandate the RCMP actively began to investigate and counter subversive activities in Canada.

In 1969 a Royal Commission on security -- the Mackenzie Commission -- was established to examine security procedures in government and to provide comment on the question of Canada's overall national security. The principal recommendation of the Commission, later rejected by the government, called for the establishment of a separate
civilian security agency. In lieu of this, the Special Branch was renamed the Security Service and placed under the control and management of a civilian director. In the Commission's attempt to define the nature of the threats to Canadian security, it concluded in part that the state had a duty "to protect its secrets from espionage, its information from unauthorized disclosure, its institutions from subversion, and its policies from clandestine influence." In putting forward this definition, the Commission re-affirmed its view that subversion was a continuing threat to Canada's national security.

The Security Service developed gradually and incrementally throughout the 1970's without a defined statutory basis. It derived its authority from power granted to the Governor-in-Council in the RCMP Act, which permitted it to assign national security related functions to the RCMP. A more explicit mandate from the same source was bestowed upon the Security Service in 1975, in the form of a cabinet directive. In broad terms, the directive tasked the RCMP to "discern, monitor, investigate, deter, prevent and counter persons engaging in subversive or other security activity inimical to national security." As a result the RCMP, with governmental authorization, continued to monitor and investigate those suspected of engaging in acts of subversion.

In 1977, a Commission of Inquiry Concerning Certain
Activities of the Royal Canadian Mounted Police -- the McDonald Commission -- while critical of the Security Service, concluded that the force had adequately dealt with espionage and the activities of foreign intelligence agencies in Canada. In the area of subversion it found an inability by the RCMP to distinguish between subversion and dissent. In determining actual threats to Canadian security the Commission outlined three broad categories, "activities of foreign intelligence agencies, political terrorism, and subversion of democratic institutions."³

The McDonald Commission found fault with the Security Service's ability to investigate subversion, but it still recognized subversive activities as constituting a viable threat to national security. In further defining subversion it used the terminology revolutionary subversion which it described as activities directed towards the destruction of the democratic system.⁴ The report recommended that the new civilian agency, which it had proposed, be expressly forbidden from investigating lawful advocacy, protest or dissent. The emphasis of the McDonald Commission was on defining and limiting the parameters and scope of subversive investigations. There was little debate over the extent to which subversion itself should be considered a legitimate threat to national security. The McDonald Commission concluded that subversion was a proper subject of concern for
a security intelligence agency.

On 18 May, 1983 the Solicitor General of Canada tabled Bill C-157 in the House of Commons as an Act to Establish the Canadian Security Intelligence Service, which for the first time proposed to legislatively define threats to the security of Canada. Section 2 of the Act defined those threats as espionage and sabotage Section 2(a), foreign influenced activities Section 2(b), and terrorism Section 2(c). Paragraph 2(d) of Bill C-157 while not using the actual term 'subversion' became known as the subversive section because of the nature of the activities it described:

Activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow of the constitutionally established system of government in Canada.5

The controversy which emerged as a result of Bill C-157 focused primarily on the intended investigative powers of the new Service as well as the threat definitions particularly paragraph 2(d). In order to address these issues and recommend changes to the legislation a special Senate Committee, chaired by Senator Michael Pitfield was established. In its final report the Committee re-affirmed subversion as a separate and unique national security threat. However, it recommended the paragraph 2(d) definition be narrowed further in scope by including a reference to violence as a requisite factor for the destruction or overthrow of the
constitutionally established system of government. It made no amendments to the first part of the definition which covered non-violent subversive activities such as covert and unlawful attempts to undermine the system of government. When the revised CSIS Act was passed on 21 June, 1984 paragraph 2(d) had been amended to read:

Activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of the constitutionally established system of government in Canada.6

The CSIS Act also established the Security Intelligence Review Committee as an independent review mechanism which was empowered to generally review the performance of the duties and functions of CSIS and submit an annual report to the Solicitor General of Canada and Parliament. In 1986, SIRC undertook its first operational review of CSIS. For this purpose it selected the counter-subversion branch of the Service which was responsible for conducting investigations against the activities described in paragraph 2(d). In its 1986-1987 annual report the Committee found little disagreement or difficulty with the need for the counter-intelligence and the counter-terrorism branches of the Service. In conducting investigations against counter-subversion targets, however, it concluded CSIS was casting its net too wide.7 In its opinion the subversive threat posed by those groups and individuals was low. If felt that counter-
subversion investigations centred primarily around two issues: "undue foreign influence and the risk of violence." SIRC therefore recommended that the counter-subversion branch be disbanded and its files divided between the counter-intelligence branch which could deal with foreign influenced activities under paragraph 2(b) of the Act, and counter-terrorism which would investigate the potential for the use of violence as described by paragraph 2(c).

The Solicitor General responded to SIRC's recommendations by forming an independent advisory team headed by Gordon F. Osbaldeston to examine the general development of CSIS and "whether CSIS operational policies concerning targeting, particularly in counter-subversion, have balanced effectively the needs of the state and the rights of individuals." The team submitted its report entitled, People and Process in Transition to the Solicitor General on 28 October, 1987.

The advisory team studied SIRC's 1986-1987 annual report and examined the files of the counter-subversion branch. Its submission to the Minister supported SIRC's proposal to eliminate the counter-subversion branch and re-assign its duties and functions. Foreign influenced activities detrimental to the security of Canada which could be subversive in nature would become the responsibility of counter-intelligence, while domestic acts of politically motivated violence would be investigated by counter-terrorism.
Paragraph 2(d) of the CSIS Act, the subversion threat definition would remain as part of the legislation in order to allow for the collection of residual intelligence on subversive activities.

The recommendations of SIRC and the independent advisory team to disband the counter-subversion branch challenged the legitimacy of paragraph 2(d) and the actual threat posed by subversion in Canada. This thesis will attempt to provide a comprehensive definition of subversion in order to compare it to the paragraph 2(d) definition. It will be argued that while paragraph 2(d) represents a more restricted or narrowly defined definition of subversion it still captures or embodies the main principles of subversion. An analysis of the 1986-1987 findings of SIRC concerning counter-subversion and paragraph 2(d) will also be conducted because this formed the basis for SIRC's 1989 recommendation to the Special Parliamentary Committee, established to review the CSIS Act, to repeal paragraph 2(d). SIRC, and the Parliamentary Committee which accepted this recommendation, based their decision on two basic reasons. They believed that paragraph 2(d) activities could adequately be covered by the Service through its investigation of foreign influenced and terrorist activities. The second reason was the fact that once the counter-subversion branch was disbanded no new investigative files had been opened under the authority of paragraph 2(d).
alone.

In 1991 the office of the Solicitor General on behalf of the federal government responded to the recommendations of the Parliamentary Review Committee. It neglected, however, to sufficiently address the debate or controversy surrounding paragraph 2(d). The Minister believed that the threat definitions included in the Act were adequate and amendments were unnecessary. This basically left the issue over the validity and requirement for paragraph 2(d) unresolved.

The fact that a particular threat at a given time may be low or moderate does not mean that an assessment of this nature, from an intelligence perspective, is any less valuable to a government. A subversive threat is not specifically linked to communism or left wing ideologies. The failure or demise of a certain ideology should not necessitate the dismantling of the mechanisms in place to monitor and investigate subversive activities. The methodologies of subversion are easily adopted by any group or individual whose objective is to undermine and subvert a political system.

This thesis will argue that this philosophy of security and intelligence was incorporated into the CSIS Act. The four definitions of threats to the security of Canada are there to provide overall or comprehensive protection against all manner of threats. This concept was understood by the McDonald Commission and the authors of the CSIS Act. The decision by
SIRC and the Five Year Parliamentary Review Committee to remove paragraph 2(d) would have resulted in an intelligence gap and the inability of CSIS to adequately advise the government of threats against the political system.

It will be demonstrated how paragraphs 2(b) and 2(c) of the CSIS Act on their own would be unable to provide adequate protection against the type of activities described by paragraph 2(d). Arguments will be made that the findings and opinions of SIRC with respect to the counter-subversion branch may have been adversely influenced by the fact that the files they reviewed did not accurately reflect the collection criteria of the CSIS Act. This in turn may have impacted or effected its final decision regarding paragraph 2(d).

The testimony from witnesses, both for and against paragraph 2(d), as well as the comments made by members of the Committee during the Parliamentary hearings will also be discussed and analyzed. It will be shown that the Committee's decision to recommend the repeal of paragraph 2(d) may have been influenced by the findings of SIRC. The Committee also may have politicized the issue by comparing paragraph 2(d) and CSIS with the wrongdoings committed by the former RCMP Security Service in Quebec during the 1970's.

The main argument of this thesis is that the basis upon which SIRC and the Parliamentary Review Committee made their recommendation to repeal 2(d) was founded on erroneous
assumptions and misinterpretation as to the intent and purpose of the definitions of the four threats to the security of Canada. Paragraph 2(d) is consistent with a narrowly defined definition of subversion and therefore in order to adequately investigate subversion and protect against threats to the constitutionally established system of government in Canada it must play an integral role in the overall mandate of CSIS.


3. Ibid., p. 414.

4. Ibid., p. 417.


8. Ibid., p. 40.

CHAPTER I
DEFINING SUBVERSION

In the international political system, individual sovereign states are exposed and subjected to threats to national security by either external or internal forces. Open military confrontations between nation states are, perhaps, the most commonly recognized form of international conflict, but other more subtle and clandestine forms of external threats to national security do exist. These include espionage, and the use of intelligence agents, that interfere or influence the domestic affairs of another nation state. Forms of territorial violations and acts of international aggression include engaging in acts of covert intrusion in an attempt to determine strengths and weaknesses and gain insight into another state's military preparedness, economic viability and governmental integrity.

Espionage is typically associated with existing conflicts between two or more nation states, such as overt military hostilities or, as in the case of the modern nuclear era, a mutually recognized undeclared state of confrontation. In either case, espionage activities directed against the security and national interests of another state are recognized as external threats. A component or ancillary of espionage is interference, or foreign-influenced activities,
carried on within another sovereign state. Foreign influence entails the development of forces which are deployed and encouraged to work for the benefit of the foreign state while pursuing activities that are deemed detrimental to the national interests of the targeted state. Whether carried on by domestically enlisted elements or in conjunction with actual foreign operatives, the conspirators and ultimate benefactors are foreign, which classifies the threat as external.

Internal, or domestic, threats are comprised of activities detrimental to a nation state's interests. One of the more controversial and well documented domestic security threats is subversion. Like espionage, subversion can encompass most political ideologies, in the sense that it is politically and ideologically neutral. Spying, regardless of whether it is carried out by right wing or left wing elements, totalitarian states or liberal democracies, is still, by the nature of its activity, espionage. Subversive activities likewise need not be aligned, or specifically identified, with any given political concept.

The term subversion is not usually criminally defined or considered a statutory offence in many western countries. In 1979, R.J. Spjut, in attempting to define subversion in the British Journal of Law and Society, wrote:

There is no concept of subversion in constitutional
law and the word has no generally understood meaning for political and legal theorists.¹

In British and Canadian statutory criminal law, sedition is perhaps the activity that relates closest to the concept of subversion. As a term applied to the internal security of a state, sedition, broadly defined, covers views or actions "which disturb the internal tranquillity of the state."²

Sedition is more precisely defined in the criminal code of Canada 1991 Section 59(4):

Without limiting the generality of the meaning of the expression "seditious intention", everyone shall be presumed to have a seditious intention who a) teaches or advocates, or b) publishes or circulates any writing that advocates the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada".³

In a 1989 paper entitled, Defining Subversion: The Canadian Experience Since 1977, Peter Gill argued that since sedition is in effect tied to the criminal law, it places a restriction on the political intelligence gathering techniques available to governments. In his opinion, the governments in North America, Australia and the United Kingdom adopted the usage of the more illusory term subversion because it provided for the availability of a broader scope of intelligence collection, without the restriction associated with criminal law.⁴

Intelligence investigations, unlike those of a criminal
nature, are intended to provide information in advance or prior to the commission of a criminal offence. Investigations conducted under the jurisdiction of the statute law by peace officers are usually after the fact, or once reasonable and probable grounds have determined that an offence has taken or will take place. Since subversion is not criminally defined, a government is capable of gathering intelligence domestically under the auspices of subversion, without being curtailed by the limitations of statutory criminal law.

Efforts made by academics, lawyers, politicians, public servants and members of the intelligence and security communities, trying to define subversion have demonstrated that it is a complex and difficult undertaking. In the Oxford English Dictionary, subversion is defined:

as the action of subverting or state of being subverted; overthrow, demolition (of a city, stronghold, etc.); the turning (of a thing), upside down or uprooting it from its position; overturning, upsetting (of an object). In immaterial senses: overthrow, ruin of a law, rule, system, condition, faculty, character, etc. of persons, countries, peoples, or their lives or fortunes.

The term subvert is defined:

To overthrow, raze to the ground (a town of city, a structure, edifice. To upset, overturn (an object), occas. to break up (ground); to undermine the character, loyalty, or faith of, corrupt, pervert (a person). To disturb (the mind, soul); to overturn, overthrow (a condition, or order, of things, a principle, law, etc.). To bring about the overthrow or ruin of (a person, people, or country, a dynasty, etc.)
With the advent of the communist international in the 1920's, and following World War II with the development of the cold war, subversion became closely associated with the communist ideology. National security efforts in the West in general and in Canada in particular focused on countering the threat of world communist revolution. From a socialist perspective, subversion has been viewed as a security concept created by modern capitalist states to deter the Marxist/Leninist doctrine and its various revolutionary adherents.

Elizabeth Grace and Colin Leys claim, unlike other writers who have found subversion a grey area and difficult to define, that subversion has always been a fairly clear reality. They have defined it from a leftist perspective as:

legal activities and ideas directed against the existing social, economic and political order (and very seldom against 'democracy', as liberal-democratic states are wont to claim). Any radical activity or idea with the potential to enlist significant popular support may be labelled 'subversive', the effect of so labelling it is to declare that such activity or idea aims, directly or indirectly, at the overthrow (by implication violent) of democracy, and/or that it uses or envisages undemocratic means, and/or that it is 'covert'(in this context, a pejorative term for activities that are entitled to be private, but that the state want to know about).6

The problem with subversion according to Grace and Leys is that the majority of definitions given for it conflict with the principles of liberal democracy. In their view once the
concept of subversion is admitted into law, few if any effective limits can be placed on the counter-subversion activities of the state. They add, however, that subversion involves illegitimate activities which normally means violence or force, and the illegitimate goal of subversion is the overthrow of parliamentary democracy.7

Others have defined subversion in more figurative terms. Peter Hamilton for example provides a very colourful and yet sinister definition.

*Subversion* overthrows by attacking the fabric, the foundation or the mind of its target. Its attack is insidious and at first not perceptible; like certain types of cancer, its presence may not be detected until the body is completely corrupted. It is highly flexible, adapts itself to the nature of its target; if one method fails, it will try another -- if the timbers are too strong to be battered down by brute force, it will use white ants. It also fosters and uses natural disintegrative forces such as moral and physical perversion for breaking down whatever order or institution it is attacking.8

There are more practical definitions which tend to be less subjective and politically unbiased, such as the one provided by Roger Cosyns-Verhaegen from his work *Theory of Subversive Action*, 1958.

Subversive action is directed against the established order of a given country and, in particular, against its machinery of government. It expresses itself according to a uniform plan and operates in fields as varied as possible, affecting all public or private institutions with methods appropriate to each particular case. At the same time, subversive action weakens and, to a certain
extent paralyses, the authorities in power by directing its administrative bodies, distributing the economic and social life and by discrediting authorities.

Robert Mars in the *Collapse of Democracy*, 1975, stated that subversion is a technical term which has a precise meaning:

> it may be defined as a systematic attempt, by an organized group to overthrow an existing society. Many forms of subversion are at first sight, indistinguishable from legitimate forms of protest and dissent ... the subversive recognizes no limits to his political action which is designed, not to modify the existing form of society, but to destroy it and to substitute some new revolutionary model... Because of his totalitarian view of politics, the subversive is prepared to use any and all weapons in pursuit of his aims. It may be tactically expedient to work within democratic institutions and to avoid breaking the law and the constitution, and will be ready to overthrow them when he judges the time ripe.  

A more functional, less rhetorical or theoretical, understanding of subversion can be obtained by reviewing the 1975 Special Report, submitted to the Institute for the Study of Conflict, entitled *New Dimension of Security in Europe*. The report details four levels of subversive activities and places them on a graduated continuum, which is premised on the incremental increase of associated and related violence.

**Level 1:** Selective target subversion; example in industry, the universities, parliaments or assemblies and other institutions, publishing, the media. The objective is to multiply the effectiveness of numerically small groups, by
penetration or infiltration of larger ones, which can be used, against the wishes of the majority. Over a period, a climate of demoralization and discontent is created... the objectives are to bring about a loss of will on the part of the government and a loss of confidence in the government by governed.

Level 2: Minor political violence and breaches of the law, intimidation of moderates; violent protest marches; provocation of the police.

Level 3: Major political violence, terrorism, urban guerilla warfare.

Level 4: General breakdown of the state, revolutionary anarchy, danger of civil war; possible coup de etat either by revolutionaries or by those who wish to prevent a revolutionary coup.11

As indicated by the definitions and descriptions subversion is a complex domestic national security threat. It is comprised of certain identifiable characteristics and pre-requisites. Even though subversion has been closely associated with the communist revolutionary ideology, it is not necessarily unique to any one particular political philosophy. The methodologies of subversion can be adopted and utilized by any movement across the entire political spectrum, including the extreme right. Subversive activities provide a flexible methodology for a variety of groups, organizations or individuals who advocate violent government change. The activities themselves result in any particular organization being labelled subversive, not any individual ideology.
Subversives begin deceptively and purposefully by working from within existing components of a system, slowly, unobtrusively, yet meticulously, to undermine and erode basic foundations and institutions. The nature and characteristics of this type of subversive activity are quite adequately reflected by the description outlined in Level 1 and Level 2 of the Conflict Study's special report. Subversion, in addition to maintaining a covert element, is a progressive process, as opposed to one clearly defined act or isolated incident, such as that which may be characterized by a specific act of politically motivated violence. It should be understood as a dynamic, continuous, goal oriented, series of actions with a clearly defined objective.

Subversion is also defined on the basis of its ultimate intention, which is the overthrow of an existing political, domestic system of government. It should not be confused with the removal or destruction or disruption of individual political parties or political affiliations which operate within the system.

Subversive activities are the actual means to the end, and in a Machiavellian sense as well, the ends justifies the means. By examining subversive activities as static, isolated incidents and not as interrelated, interconnected, pre-planned activities, the observer may fail to comprehend the existence of subversive behaviour. Acts of minor violence or breaches
of the law, without comprehending their underlying intention as subversion, may be dismissed as non-political, criminal behaviour. Activities such as those described in Level 3 and Level 4 of the Conflict Study should quite readily be detected by national security organizations. However, if the activities in Level 1 and Level 2 were properly assessed and appropriately countered, perhaps urban warfare, civil war, and revolutionary anarchy could be prevented. The ability to provide advance warning to governments is after all the primary objective of a security and intelligence organization.

Christian Bay in a paper entitled Civil Disobedience: The Inner and Outer Limits, describes civil disobedience as:

any act or process of public defiance of a law or policy enforced by established governmental authorities insofar as the action is premeditated, understood by the actors to be illegal or of contested legality, carried out and persisted in for limited public ends and by way of carefully chosen and limited means.\(^\text{12}\)

In contrast to civil disobedience, the inner limit, Bay also defines uncivil disobedience, the outer limit, as "any act of disobedience or resistance that does not recognize the limits of civil disobedience and includes acts of revolutionary terrorism."\(^\text{13}\)

The primary difference between civil disobedience and subversion is the fact that it is carried out for limited public ends which would fall well short of overthrowing a political system. Civil disobedience is more an act of
political protest designed to draw attention to certain problems within the existing system in order to bring about policy changes or legal amendments. Uncivil disobedience which does include violence may be more closely related to terrorism than subversion, especially since it also seeks to achieve a political objective within the confines of the system of government.

Another problem with defining subversion is the issue of whether or not it should necessarily include the violent overthrow of a political system. Definitions of subversion use terms such as destroy, overturn, overthrow and undermine, which on their own denote some degree of violence. The question is can subversion occur or be successful without violence. Subversive activities, such as those described in Level 1 and Level 2, include acts of civil disobedience and minor violations of the law, but they are not violent per se. If these actions are ultimately successful in overthrowing a government, no matter how remote the possibility, because a particular system was exceptionally vulnerable or inherently weak, then violence would not have to occur. Others feel that violence is an essential element of subversion. As Lord Chalfont put it during parliamentary debates in the House of Lords of the United Kingdom in 1975:

it is perfectly permissible for anyone in a democracy to dissent from the policies of the government, of whatever political complexion they
may be, and to attempt to change those policies, or even change the Government, through the normal political process. To go further, it is equally permissible to dissent from the system of government itself and to try to change that by persuading a majority of the people that it should be changed; but here it is important to distinguish between dissent and subversion... For the purpose of this analysis it might be useful to take as a point of departure the familiar proposition that the distinction between dissent and subversion is in the dividing line between the use and abuse of the instruments of democracy...there is one factor in this argument which seems to me to be unmistakable and to carry a special significance; that is, the factor of violence. Here again, I think that we must attempt a definition of the terms...violence is the illegal or immoral use of force!4

If subversion does operate on a continuum of progressive activity, then at one end of the spectrum activities would be non-violent and perhaps legal, while at the other end they would be characterized by extreme violence. Difficulties arise when the entire spectrum of subversive activities is used to define subversion because those actions furthest removed from violence are often confused with legitimate political dissent. This problem was outlined by the 1977 Australian Royal Commission on Intelligence and Security, as the Commissioner wrote:

At one limit (which I will call the outer limit) subversion extends to the mounting of armed revolution; it is the other limit (which I will call the inner limit) that creates the difficulty of definition... The difficulty about the "inner limit" of subversion is that it verges on legitimate political activity, on rights of dissent and of opposition... Great care must be taken to achieve a proper balance between the interest of
the nation in maintaining these (basic democratic) rights and its interests in security. By maintaining such a balance the organization may hope to avoid the opprobrium of being called a secret political police force.\textsuperscript{15}

To distinguish between subversion and dissent within this "inner" grey area it is necessary to be able to identify the ultimate intent of those that engage in such activities. This can be a difficult undertaking, and since subversion is covert and clandestine it may even be feasible for subversives to temporarily operate as legitimate dissenters. To clarify further between dissent and subversion it is necessary to define the former as well as the latter. Dissent is defined as disagreement, withholding assent and to differ in opinion. John D. Whyte and Allan Macdonald wrote in an article entitled, \textit{Dissent and National Security and Dissent Some More}, that if the security of a nation is threatened by a desire for a better world through expression and reform, that dissent and its implicit claim that society needs to be re-ordered is threatening.\textsuperscript{16} Liberalism they argued because of its freedom for individualism places a discounted value on the social interest to preserve the constitutionally established system of government. The system of government they feel, however, should not be made immune from "radical criticism and radical alteration by a policy that is non-coercively mobilized and that expresses a preference for change."\textsuperscript{17} Dissent on its own does not constitute a threat to national security because it
is not directly associated with any methodology such as espionage or subversion. If those who disagree or differ with the state, no matter how radical their opinions, take action to change or alter what they consider to be wrongs through the use of terrorism or subversion, then their activities may fall within the ambit of threats to national security. It is not the disagreeing or the right to disagree that becomes the national security issue but rather the methodology used to correct the source of the dissent. The possibility of confusing dissent and subversion could be curtailed by limiting the scope of subversive surveillance to activities that are directed toward the violent overthrow of a domestic political system. In the case of liberal democracies where individual rights are constitutionally entrenched, the use of a definition of subversion narrowed or confined by the evidence of violence would be a prudent safeguard.

A comparative analysis of the legislative definitions adopted by western states may prove useful in further understanding subversion and assist in the examination and evaluation of Canada's efforts to define the term. Great Britain's Security Service Act of 1989 includes within its general functions and mandate of the Service, activities readily identified as subversive.

The function of the Service shall be the protection of national security and, in particular, its protection against threats from espionage,
terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.\textsuperscript{18}

In the \textit{New Zealand Intelligence Service Act 1969}, under Section 2, Interpretation, subversion is defined as:

attempting, inviting, counselling, advocating or encouraging

a) the overthrow by force of the government of New Zealand or

b) the undermining by unlawful means of the authority of the state in New Zealand.\textsuperscript{19}

The original 1979 \textit{Australian Security Intelligence Organization Act} differentiated between domestic subversion and subversion originating from foreign soil. Section 4 of that particular statute reads:

4. In this Act, unless the contrary intention appears - ... domestic subversion means activities of the kind to which sub-section 5(1) applies;...

5.(1) For the purposes of this Act, the activities of persons, other than activities of foreign origin or activities directed against a foreign government, that are to be regarded as subversion are:

(a) activities that involve, will involve or lead to, or are intended or likely ultimately to involve or lead to, the use of force or violence or other unlawful acts (whether by those persons or by others) for the purpose of overthrowing or destroying the constitutional government of the Commonwealth or of a State or Territory.\textsuperscript{20}

As noted, Section 5(1) defined only domestic subversion and not foreign subversion. The reason for legislatively
defining the former but not the latter was the assumption that there was an absence of potential danger to democracy originating from foreign activities. In addition, this version of the Act specifically associated unlawful acts with subversion. This was the direct result of recommendations that had been made by the 1977 Royal Commission on Intelligence and Security which insisted that:

Subversion, both in the limited sense which I have proposed for domestic activities and in the general sense, involves an intention, sooner or later, to commit a criminal offence. An agreement, undertaking or conspiracy to commit an offence is itself a criminal offence.

In 1984, a Royal Commission was formed to review Australia's Security and Intelligence agencies. The Commission specifically examined the ASIO Act's definition of subversion and made several recommendations including the removal of the actual term subversion from the Act. This proposal was based on the fact that subversion was not named in common law or as a statutory offence and due to its vagueness had the potential to mislead people as to ASIO's responsibilities. The Commission felt it would be more appropriate therefore to place subversion under the general rubric of "politically motivated violence". Subversive activities would be dealt with as a particular form of violence. Politically motivated violence, according to the Commission, would include acts of violence directed to the
overthrow of the constitutional system of government as well as other acts of violence including terrorism. The recommendation was made to repeal Section 5 entirely and amend the Act so that politically motivated violence would include:

those activities of persons which involve violence or are intended or likely to lead to violence (whether by persons or by others) and are directed to the overthrow or destruction whether by themselves or together with other or subsequent acts of violence or whether with or without other unlawful acts, of the government or the constitutional form of government of the Commonwealth or of a State of Territory.23

The final version incorporated into the revised ASIO Act 1985, however, stated that politically motivated violence means:

(a) acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective, whether in Australia or elsewhere, including acts or threats carried on for the purpose of influencing the policy or acts of a government, whether in Australia or elsewhere;

(b) acts that --

(i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and

(ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the government or the constitutional system of government of the Commonwealth or of a State or Territory.24

The activities included within the new Act, according to the Commission, could still be described and referred to as subversive. The legislation, while similar, differs from the Commission's findings and the 1979 ASIO Act, in that the
association between subversion and unlawful acts has been omitted.

In 1976, the Church Report on the intelligence activities of the United States provided a generalist definition of subversion, one which excluded direct references to violence or unlawful conduct. It described subversion as

Actions designed to undermine the military, political, psychological, or moral strengths of a nation or entity. It can also apply to an undermining of a person's loyalty to a government or entity. 25

A more precise operational definition of subversion for the United States can be obtained by examining the policies and directives of the agency primarily empowered to investigate subversive activities, the Federal Bureau of Investigation. Since subversion is not a specific statutory criminal offence in the United States the FBI has had to use a definition derived from its own terms of reference. In response to a 1976 request from the United States Controller's study of the FBI's domestic intelligence operations, the Bureau offered the following definition:

Subversive activities are those which are aimed at overthrowing, destroying or undermining the government of the United States or any of its political subdivisions by illegal means prohibited by statute. 26

Illegality as a constitue element of subversion is also reinforced within FBI policy directives for domestic security investigations. The authorization for such investigations is
Domestic Security Investigations

I. Basis of Investigation

A. Domestic security investigations are conducted under authorized under Section II (c), II(F), or II(I), to ascertain information on the activities of groups, which involve or will involve the use of force or violence and which involve or will involve the violation of federal law, for the purpose of:

(1) overthrowing the government of the United States or the government of a State;

(2) substantially interfering, in the United States, with the activities of a foreign government or its authorized representatives;

(3) substantially impairing for the purpose of influencing U.S. government policies or decisions:

   (a) the functioning of the government of the United States;

   (b) the functioning of the government of a State; or

   (c) interstate commerce.

(4) depriving persons of their civil rights under the Constitution, laws, or treaties of the United States.27

The Bureau's emphasis on linking subversion and unlawful activities is not really surprising given that the FBI deals with matters of national security as a law enforcement agency.

The legislative definitions of subversion and subversive activities from the examples provided reflect the basic tenets of subversion. The target and objective of subversion, in each case, is the government, in particular, the political
system itself which embodies the governmental structure, nature and form. As in the case of Great Britain, this is referred to as parliamentary democracy, while in New Zealand's legislation it is identified as only "the government". In Australia the targeting focus of subversive activities is construed as the "constitutional form of government".

There is also consistency among the statutes as to the parameters each has established on the scope or nature of subversive activities to be investigated. The selected limitations clearly fall within what has previously been referred to as the outer limits of subversion. Each statute incorporates this fundamental element, which is the use of force or violence to overthrow the existing political system. In the case of New Zealand and the United States, another aspect of subversion is contained in their legislation: the existence or evidence of unlawful or illegal behaviour. Great Britain is the only country which includes in its security mandate, subversive activities intended to overthrow parliamentary democracy by political or industrial means. These terms, however, are not further defined or interpreted within the British Security Service Act. In the ASIO Act the main focus is on the connection between subversion and the use of violence. The inclusion of unlawful activities was recommended by the 1984 Australian Royal Commission, but it was not reflected in the revised legislation.
Another tenet of subversion also included within the legislative mandates is the concept of subversive activities being developmental or progressive in nature. The statutes, with the exception of New Zealand, use terminology which refers to "actions intended," "activities which involve or will involve," and acts that "are intended or are likely" to result in the overthrow of the government. The objective is to convey the fact that subversion and its related activities, are temporal, and that there is a certain eventuality as to the threat.

The descriptions and interpretations of subversion and subversive activities contained within the statutory security mandates of the selected western democracies, embody and capture the essential principles and essence of subversion. As demonstrated, subversion is a complex, multi-faceted national security issue. The states included in this study have attempted to extract and legislate against those aspects of subversion which can reasonably be considered threats to liberal democratic governments. They have chosen or elected to err on the side of caution by placing stringent limitations on the parameters of subversive investigations to ensure efforts to protect the system of government do not infringe on, or violate, the rights of the individual. Although there are variances, as indicated, with respect to wording, and in some instances scope, the examples provided are consistent in
that they have documented subversion, and subversive activities, as a threat to their national security interests.
ENDNOTES CHAPTER I


2. Ibid., p. 1.


7. Ibid., p. 73.


13. Ibid., p. 42.


17. Ibid., p. 27.


21. Ibid., p. 66.

22. Minkoff, p. 29.


26. Ibid., p. 25.

CHAPTER II

SUBVERSION: THE CANADIAN EXPERIENCE

In the history of Canada's security and intelligence, dating from World War I until the formation of the Canadian Security Intelligence Service in 1984, the primary threats to national security were subversion and espionage. Subversion, and the subsequent investigation of its related activities, was largely responsible for the formation of an institutionalized Canadian security apparatus. During the inter-war period Canadian security and intelligence concerns centred around labour unrest, anarchism and the expansion of the communist international. The mandate for the investigation of these threats was given to the Criminal Investigation Branch of the Royal Canadian Mounted Police.

In 1946, the defection and resultant revelations of Igor Gouzenko, the cipher clerk at the Soviet Embassy in Ottawa, launched a new awareness and governmental appreciation of the need for greater security precautions, especially within federal institutions. The government reacted by approving the formation of the Special Branch of the Royal Canadian Mounted Police and empowered them to investigate espionage, subversion, and to take measures to ensure that government institutions were staffed by loyal and trustworthy civil servants. Under this mandate, as well, the RCMP actively
began to pursue subversive activities within Canada.

On 16 December 1966, the government of Lester B. Pearson appointed a Royal Commission on Security, whose terms of reference, under the Inquiries Act, was to make a full and confidential inquiry into the operation of Canadian security methods and procedures, and to advise the government accordingly. Maxwell Weir Mackenzie was appointed as chairman of the Commission, and on 16 September, 1968 he submitted his first report to the government which was published in abridged format in June 1969. In response to its terms of reference the Commission decided to adopt a narrow interpretation, and limit its inquiries to procedures concerned with the protection and disclosure of information and "... the protection of Canada against the activities of subversive organizations and individuals." Under the heading of general considerations they declared:

The requirement for security procedures is based primarily upon the state's responsibility to protect its secrets from espionage, its information from unauthorized disclosure, its institutions from subversion and its policies from clandestine influence.

It was apparent from the outset that the Commission had decided to make subversion one of its primary areas of concern. They soon learned, however, that they were unable to find any satisfactory legal or other references, capable of providing a simple definition of subversion. They argued
The area of subversion involves some even more subtle issues, and the range of activities that may in some circumstances constitute subversion seems to us to be very wide indeed: overt pressures, clandestine influences, the calculated creation of fear, doubt and despondency, physical sabotage or even assassination - all such activities can be considered subversive in certain circumstances. Subversive activities need not be instigated by foreign governments or ideological organizations; they need not necessarily be conspiratorial or violent; they are not always illegal. Again fine lines must be drawn. Overt lobbying or propaganda campaigns aimed at effecting constitutional or other changes are part of the democratic process; they can however be subversive if their avowed objectives and apparent methods are cloaks for undemocratic intentions and activities. Political or economic pressures from domestic or foreign sources may be subversive, particularly when they have secret or concealed facts or when they include attempts to influence government policies by the recruitment or alienation of those within the government service or by the infiltration of supporters into the service. 4

In its overall assessment of threats to Canadian security the Mackenzie Commission considered or held the view that they were in large part the result of the adversarial relationship between international communism and the west. It was within this context that the Mackenzie Commission examined subversion, which may have had a subjective impact on its analysis and interpretation of the threat. Canada, the Commission stated, was the target of subversion or potentially subversive activities which originated or were directly influenced by "communist powers". Activities conducted by communists, the Commission declared, varied from efforts to
develop:

front organizations to attempts to subvert individuals in government, the mass media, the universities, the trade unions, emigre and ethnic groups and political parties. Such activities are assisted by the fact that the communists are able to exploit and exaggerate existing elements of social unrest and dissent concerned with a variety of appealing causes.¹

The Commission also dealt with the issue of identifying the subversive target or its overall objective. In referring to subversion it stated:

if there is any evidence of an intention to engage in subversion or seditious activities, or if there is any suggestion of foreign influence, it seems to us inescapable that the federal government has a clear duty to take such security measures as are necessary to protect the integrity of the federation.²

The report also declared that the government should remain informed about "the intentions and capabilities of individuals or movements whose object is to destroy the federation by subversive or seditious methods"³ It is evident from these statements and the use of the term "federation" that the Commission recognized how subversion could threaten national security from the perspective that its objective ultimately is the destruction of the Canadian system of government.

In its final recommendations, however, the Mackenzie Commission fell short of enunciating the essence of subversion. The mandate it recommended for a new civilian security and intelligence service did not define subversion or
provide descriptions of subversive activities. The duties and functions they outlined for the new service included the right:

i) to collect, collate and evaluate information or intelligence concerning espionage and subversion, and to communicate such information in such manner and to such persons as the Head of the Service decides to be in the public interest.\(^8\)

Nonetheless, the Commission's Report did analyze and discuss many of the essential elements which constitute the threat of subversion. It recognized the concept of progressive or ultimate intentions, violent, non-violent actions, and the lawful or illegal aspects which may comprise subversive activities. It also identified subversion with the targeting and destruction of governmental systems. By so doing, the Commission at least re-affirmed subversion as a threat to Canada's national security.

The Mackenzie Commission's recommendation for the establishment of a civilian security and intelligence service, separate from the RCMP Security Service, was rejected by the prime minister, Pierre Trudeau. The government's decision effectively delayed the introduction of legislation to deal with security and intelligence issues in Canada.

Throughout the 1970's the RCMP Security Service, remained responsible for investigating matters of national security without the benefit of a defined mandate. It continued to derive its authority from power granted to the Governor-in-
Council under the RCMP Act, which permitted it to assign national security related functions to the RCMP. On March 27, 1975 a more explicit mandate was given to the Security Service, in the form of a cabinet directive entitled "The Role, Tasks and Methods of the R.C.M.P. Security Service." It authorized the Security Service to:

- maintain internal security by discerning, monitoring, investigating, deterring, preventing and countering individuals and groups in Canada when there are reasonable and probable grounds to believe that they may be engaged in or may be planning to engage in:

  1. espionage or sabotage.

  2. foreign intelligence activities directed toward gathering intelligence information relating to Canada;

  3. activities directed toward accomplishing governmental change within Canada or elsewhere by force or violence or any criminal means;

  4. activities by a foreign power directed toward actual or potential attack or other hostile acts against Canada;

  5. activities of a foreign or domestic group directed toward the commission of serious acts in or against Canada; or

  6. the use or the encouragement of the use of force, violence or any criminal means, or the creation or exploitation of civil disorder, for the purpose of accomplishing any of the activities referred to above."

Besides providing more precise guidelines to the Security Service the cabinet directive emphasized and declared subversion as a legitimate threat to Canadian national
security. Parts (iii) and (vi) clearly indicate and describe subversive activities.

Although it was responsible for investigating threats to Canada's security, the RCMP Security Service was regarded by the federal government as a police organization. As such, the government's principle of non-interference in matters of policing was subsequently applied to the organization empowered to deal with matters of national security. This had a direct impact on how the Security Service conducted investigations against what were still regarded as loosely defined threats. During the early 1970's while the RCMP Security Service was in the midst of attempting to deal with Quebec separatism and the FLQ, its activities gave rise to allegations and revelations of countering and investigative techniques which were outside legal limits. The wrongdoings of the Security Service, with respect to certain activities against target groups, aside from being illegal, exposed the Service's difficulty in effectively discerning between subversion and legitimate political dissent. By June 1977, the full impact and possible ramifications of the activities of the Security Service had surfaced, and the federal government, with the encouragement of the RCMP, appointed a Royal Commission of Inquiry. The Commission, chaired by Justice D. C. McDonald, was established on 6 July, 1978 to inquire and report on certain activities of the RCMP. The

In considering national security issues from a generic perspective, the Mcdonald Commission proposed that national security itself involved at least two concepts:

- first, the need to preserve the territory of our country from attack;
- second, the need to protect the democratic process of government from violent subversion.\(^\text{10}\)

The specific activities which constitute or comprise the actual or principal threat to Canadian national security, they concluded, involved three issue areas or categories, "foreign intelligence activities, terrorism, and democratic subversion."\(^\text{11}\) The key element of subversion, they said, which is a proper subject or concern for a security intelligence agency is the "attempt to undermine or attack through violence or unlawful means, the basic values, processes, and structures of democratic government in Canada."\(^\text{12}\)

They went further in describing and delineating a group's activities as subversive

if it aims at preventing other Canadians from enjoying such democratic rights as the right to express publicly and disseminate political opinion or the right to assemble peacefully for political
purposes, or if its activities are directed towards destroying the process of democratic elections, the functioning of parliamentary institutions, adjudication by independent courts of law, or the peaceful negotiation of constitutional differences.\textsuperscript{13}

However, in its final recommendation for the inclusion of a statutory definition of threats to Canadian security, the Commission referred to activities deemed to be subversive as "revolutionary subversion." This resulted in having to provide further definition and clarification for revolutionary subversion which they said consisted of:

activity of political parties and movements which hold ideologies advocating the ultimate overthrow of the liberal democratic system of government but may not actually be involved in political violence. We refer to the activities of such groups as revolutionary subversion for their basic aim goes far beyond the influencing of a particular government policy to the eventual replacing of our system of liberal democratic government by an authoritarian government of the extreme right or left. Such subversion, if successful, would truly be revolutionary.\textsuperscript{14}

The McDonald Commission also recognized that in Canadian history, political organizations on the extreme right or extreme left who advocated subversion did not pose a significant security threat. Nonetheless, the Commission acknowledged that there was a need to monitor an organization's strength and the extent to which it actively promoted its anti-democratic political programme. In 1976, the inquiry into New Zealand's Security and Intelligence Service by the Chief Ombudsman, Sir Guy Powles, believed, as
did McDonald, that those who espouse doctrines of revolutionary overthrow should reasonably expect to have their activities scrutinized by the state's security apparatus. New Zealand's security service, he said,

> is justified, and is acting in conformity with its statute, in keeping under close scrutiny the activities of organizations (and their members) which pursue political doctrines calling for the revolutionary overthrow of the state.\(^\text{15}\)

Upon completing his examination of subversion in New Zealand, Powles was led to conclude that

> subversion is something which has to be defined with reference to time, place and circumstance, and the term contains such a subjective element that no person is completely satisfied with another person's definition.\(^\text{16}\)

During the 1984 Royal Commission on Australia's Security and Intelligence Agencies, the Commission received an assessment from ASIO at the time that the threat from subversion was regarded as low. A low level threat, the Commission declared, was no reason for denying ASIO the power to investigate "appropriately-defined" subversive activities. They argued that

> a government is entitled, and indeed has a duty to inform itself, with a view to taking pre-emptive or protective action, about the activities of any groups that may be using or working towards the use of force or violence for the purposes of overthrowing or destroying the government or changing the constitutional form of government.\(^\text{17}\)

The McDonald Commission's recommendation concerning the statutory definitions of threats to the security of Canada
consisted of four general categories of activity in relation to which a new security intelligence service would be authorized to collect, analyze and report intelligence. These categories included:

(a) activities directed to or in support of the commission of acts of espionage or sabotage;

(b) foreign interference, meaning clandestine or deceptive action taken by or on behalf of any foreign (including Commonwealth) power in Canada to promote the interests of a foreign power;

(c) political violence and terrorism, meaning activities in Canada directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective in Canada or in a foreign country;

(d) revolutionary subversion, meaning activities directed towards or intended ultimately to lead to the destruction or overthrow of the democratic system of government in Canada.18

As an addendum and requirement for the authorization to investigate revolutionary subversion, the Commission decreed that subversive organizations, so long as they adhere to the methods of liberal democracy to promote and espouse their views, should not be subject to intrusive (primarily technical) surveillance techniques.19 It was felt that through non-intrusive methods of investigation, the Canadian Security and Intelligence Service should be able to keep track of their activities and advise the government. The Commission allowed, if there was reason to believe such groups were involved in activities which lead to espionage, sabotage,
foreign interference, or terrorism, that it would be permissible to deploy intrusive techniques against these subversive targets.

In its discussion of the constituent elements of threats to Canadian national security, the Commission argued the threats described were not insular in nature, but rather dynamic and flexible, to the extent that there would be considerable overlap among the various categories. Foreign intelligence services could support terrorist activity in Canada, while political organizations committed to antidemocratic ideologies, could provide assistance to espionage, or in certain circumstances even acts of politically motivated violence. The importance of the point made by the Commission is that the threat definition is not bound by, or subject to, precisely defined parameters. It is conceivable given the interdependent nature of certain activities that one threat, under certain circumstances, could easily be misconstrued with the intentions or activities described by another. It is important to remember, however, that the definitions still represent four distinct national security threats.

The McDonald Commission's statutory definition of subversive activity attempted to capture the essence of subversion in only one paragraph. The Commission's definition does to some extent reflect the primary principles or essential elements which comprise subversive activities. The
term "revolutionary subversion" refers to the intention of subversive activities to replace one political system with another. The inclusion of "activities directed toward or intended ultimately to lead to" embodies subversion's temporal dimension of working procedurally, and accumulatively toward an ultimate objective. The objective, as defined by McDonald, is "the democratic system of government in Canada," which is consistent with subversion in that the intended target is in fact a politically identified system of government. In its lengthy analysis of subversion, the Commission, as noted, mentioned many different activities which could be labelled subversive. It is clear the Commission's intention was to provide a mandate for a Canadian security and intelligence organization which would permit the investigation of subversion without the necessity of providing evidence of violence. Non-intrusive methods of investigation were also permitted against what would have been considered lower threshold levels of subversive activity. More intrusive surveillance techniques were to be authorized against subversive activities of a higher magnitude, including those in association with possible acts of politically motivated violence. The Commission's actual definition however does not contain any reference to unlawful activities, yet in the body of its report, subversion is described as including activities which undermine the state through unlawful means. While the
McDonald Commission itself records and discusses all the basic or constituent elements of subversion, its actual recommended legislative definition does not appear to capture the true essence of the threat.

In August 1981, the federal government announced it was accepting the McDonald Commission's recommendation for the establishment of a civilian security and intelligence agency, separate from the RCMP Security Service. The preparation of the legislation for the new Service, including the statutory definition of threats to Canadian security, was conducted by the Security and Intelligence Transitional Group, consisting of T. D'arcy Finn, the executive director, Fred E. Gibson, the deputy Solicitor General, and Archie Barr, the Chief Superintendent RCMP-SS, Policy and Development Co-ordinator. On 18 May, 1983, the Solicitor General of Canada, Robert Kaplan, tabled Bill C-157, the legislation to enact the Canadian Security and Intelligence Service. However, the negative response to this Bill led the government to announce the formation of a special Senate Committee, chaired by Michael Pitfield, to conduct public hearings, and recommend to the government changes or amendments to the Act.

One of the primary criticisms of Bill C-157 concerned the definition of threats to the security of Canada, especially Section 2(d) which became known as the subversion section. The following four categories were listed in the mandate as
threats to Canadian security:

2(a) espionage or sabotage against Canada or any state allied or associated with Canada or activities directed toward or in support of such espionage or sabotage.

(b) foreign influence activities within or relating to Canada that are detrimental to the interests of Canada or any state allied or associated with Canada and are clandestine or deceptive or involve a threat to any person.

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of violence against persons or property for the purposes of achieving a political objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow of, the constitutionally established system of government in Canada.\(^{20}\)

In the accompanying explanatory notes released by the office of the Solicitor General of Canada, the subversion section 2(d) was sub-divided into two constituent components.

- covert wrongful acts which may undermine the constitutionally established system of government, and

- activities which are directed toward the destruction or overthrow of the constitutional system of government by unlawful or unconstitutional means.\(^{21}\)

It also stated that while other areas of the proposed mandate were generally concerned with activities of foreign agents, or activities directed by foreign agents, Section 2(d) would determine the degree to which the new Service would investigate domestic issues.\(^{22}\)
During the first session of the Senate hearings, D'Arcy Finn testified that dealing with subversion was a classical problem faced by all nations, especially democracies, because it was an expression of how a nation proposed to deal with political dissent, political advocacy, and the expression of views which may be contrary to government policy. Subversion, he admitted, gave the Transitional Group the greatest amount of difficulty in terms of arriving at a decision, as to its meaning and limitations. Finn discussed the differences between the definition of subversion proposed by the McDonald Commission and the one contained in Bill C-157. He explained that McDonald's concept of "revolutionary subversion" was captured in Section 2(d) by the reference to "destruction or overthrow." In place of "democratic government" the SIT Group substituted "constitutionally established system of government" and the terms "undermine" and "unlawful" were also added to the CSIS definition. Even with these changes, Finn stated he thought the definition of subversion contained in Bill C-157 was on balance still the same as the McDonald Commission's.

An examination of the subversion debate between Finn, Robert Kaplan, and the Senate Committee provides a good insight into the complexity of the issue, as well as the nature of the threat itself. Given the definition, as it was written in C-157, Senator Nurgitz inquired as to whether or
not the wording "overthrow of the constitutional system of
government in Canada", would make a separatist party in Quebec
the target of the Canadian Security Intelligence Service.\textsuperscript{24}
The Committee wanted assurances that the legislation would not
permit investigations of this nature, and cause actions to
occur as in the past under the RCMP Security Service. In
theory, Finn advised, the mandate would pertain to any
province separating from Canada if it was done
unconstitutionally.

Following from the same line of questioning, Senator
Nurgitz asked if the Act would allow for the investigation of
a province which made a unilateral declaration of independence
and decided to secede. Unless the constitution allowed for
that particular mechanism of secession, Finn opined, it would
be unconstitutional, and therefore, captured by Section 2(d).
Finn acknowledged the difficulty in determining what may
appear to be a threat under 2(d) exclusively because a
particular action or threat could in fact apply more to
Section 2(c). Nurgitz claimed that he preferred to keep
terrorism out of the debate, because, unlike subversion, it
was an easier threat to comprehend.\textsuperscript{25} Pitfield attempted to
clarify the issue of unilateral independence declarations by
observing that a province or political party would be
permitted to advocate secession, as long as it was
constitutional. If it was done by unconstitutional means,
then it would be covered under Section 2(d). During the course of an election campaign, the individual, organization, or political party which argues in favour of constitutionally declaring unilateral independence, Pitfield said, would be considered legitimate political activity, and protected from CSIS investigation, by Section 14(3) of the proposed legislation which states:

Nothing in this Act authorizes the Service to investigate the affairs or activities of any person or group of persons solely on the basis of the participation by that person or group in lawful advocacy, protest or dissent.

The actual threat under Section 2(d), according to Pitfield, would have to be the act of actually declaring unilateral independence or conspiring toward a declaration of that nature. Senator Royce Frith, remarked that as far as the conspiratorial aspect of subversion was concerned, no one on the Committee had trouble with the first part of 2(d), "activities directed toward undermining by covert unlawful acts." The problem, he said, rested with the second part of the definition, "activities directed toward or intended ultimately to lead to the destruction or overthrow of the constitutionally established system of government in Canada," which he also felt embodied what the McDonald Commission had referred to as "revolutionary subversion".

In response to an inquiry by Senator Buckwold, regarding a hypothetical individual who ran for office as a communist
and advocated the creation of a one party system, Kaplan stated this would not constitute a threat because the person would be attempting to achieve a political objective constitutionally. If, however, the communist party, once elected, announced that it was abolishing parliament and creating a dictatorship, Kaplan felt this situation would be covered under 2(d), because the party was in effect overthrowing and destroying the constitutionally established system of government. He stated, "an individual in a position of authority, or any position such that the threat is a threat, advocating the destruction or overthrow of the constitutionally established system of government in Canada, brings himself, or herself, within the mandate."

On the issue of subversion and violence, Kaplan was asked by the Committee why the word violent had been omitted from Section 2(d). In his opinion, Kaplan stated, the terms destruction and overthrow comprehend or denote an aspect of violence. He added that subversion itself is not limited to acts of violence, and he pointed out to the Committee:

What we are protecting is not the constitution alone, but the process by which Canadians make that choice. We want to be certain that if a non-democratic or non-constitutional method is being chosen, or used, or advocated, overtly or secretly, to achieve that result, that it is a legitimate object of surveillance.

This broader interpretation of subversion, Kaplan said, was intended to permit the CSIS to investigate non-violent
subversive movements or organizations, such as the Nazis. The Nazi party in Germany, he pointed out, had attained power without the use of violence to overthrow the political system. The Canadian government, he said, proposed the 2(d) definition because there are forms in which a democracy can be manipulated without involving or contemplating violence.\(^{31}\)

Senator John Godfrey, using the example of the Nazi party, suggested that if 2(d) included a direct reference to violence, the Service would still be able to ascertain that they intended to ultimately use violence as a political means.\(^{32}\) If the word violent was added to the definition, Frith proposed, it would be in keeping with the tradition of the RCMP Security Service's cabinet directive and the old Immigration Act, thus avoiding future debate on the scope of unconstitutional issues of subversion. Section 7(b) of the former Immigration Act stated that a person was refused admission into Canada not because of membership in the communist party, but because he or she was a member of an organization that advocated the violent overthrow of the constitutionally established system of government.\(^{33}\)

Pitfield summarized the argument by stating that under the first part of 2(d), what was necessary was conspiracy, or the planning of the act, while the requirement under the second section, for destruction and overthrow, was violence.\(^{34}\) Kaplan did not agree entirely and felt that acts of domestic
subversion such as general strikes did not have to be limited or defined in terms of violence. A general strike, he said, could be designed or intended to lead to the overthrow of the government through non-violent means. Finn claimed he had no difficulty with adding the word violent to the definition, because he concurred with the Solicitor General's assessment that the terms destruction and overthrow clearly expressed violence. Finn also felt the inclusion of violence would not adversely affect the Service's mandate, so long as the first part of Section 2(d) remained intact. Frith, replying on behalf of the Committee, agreed that the conspiratorial nature of the subversion definition had to be included.

In November 1983, the Special Committee of the Senate, on the Canadian Security Intelligence Service published its recommendations, entitled Delicate Balance: A Security Intelligence Service in a Democratic Society. While there were criticisms of the definition section of threats to the security of Canada, as outlined in Section 2 of B-C157, the Committee recognized the four elements of the definition, espionage and sabotage, foreign influenced activities, political violence, and subversion, as appropriate parameters for the mandate of the CSIS. Paragraph (d) of Section 2, the subversion definition, the Committee acknowledged, was perhaps the most difficult of the threats to define because it dealt with activities closely related to legitimate political
dissent.\textsuperscript{38} Notwithstanding this, the Committee confirmed subversion as a threat to national security. However, it felt the definition within Bill C-157 had to be clarified and its scope limited.

The first part of 2(d), "activities directed toward undermining by covert unlawful acts", the Committee found unobjectionable.\textsuperscript{39} For the second part of the definition, which dealt with the destruction or overthrow of the constitutionally established system of government, the Committee recommended that it be modified by the inclusion of the phrase "by violence." As it was written in Bill C-157, the Committee felt it could possibly allow for the investigation of the activities of peaceful, legal political parties, seeking to alter Canada's constitutional system.\textsuperscript{40} Several witnesses urged the Committee to accept the McDonald Commission's recommendation that destruction and overthrow be directed against the "democratic" system of government in Canada. The Committee decided on the wording "constitutionally established system of government." They concluded that for the purpose of defining threats to national security, democracy, was too vague a term. They argued that it lacked clarity, was too elastic, and would only serve to widen the scope of the mandate.\textsuperscript{41}

A final suggestion made to the Committee, which was also one of the recommendations of the McDonald Commission,
proposed that investigations under Section 2(d) be limited to non-intrusive surveillance techniques. The Committee agreed there would be merit in the proposal if the definition of subversion in Bill C-157 remained unchanged. However, they claimed that

the definition we suggest, which would apply only to covert unlawful acts or the use of violent means to destroy or overthrow the constitutionally established system, does not have the same breadth. 42

In addition, they recommended that it be clearly stipulated, following the definition of threats to the security of Canada section, that lawful advocacy, protest or dissent were beyond the investigative purview of the CSIS.

The Senate Committee's recommendations, concerning the definitions of threats to the security of Canada, including a revised definition of subversion, was accepted by the government. In January 1984, an act to establish the Canadian Security Intelligence Service, Bill C-9, was passed by parliament. Section 2 of the Act, defines threats to the security of Canada as:

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada
directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d). 43

Bill C-157 had affirmed subversion as a viable and legitimate threat to Canadian national security which was reinforced by the findings of the Special Committee of the Senate. The practical definition contained in C-157 represented a broad interpretation of subversion, but one not totally inconsistent with the definition of subversion outlined in Chapter I. The first part of the 2(d) definition included a notion of planning and the conspiratorial nature of subversive activities. This particular part of the subversion definition was also limited in scope by the legislative requirement for the covert conspiracy to be unlawful. Subversive activities, as shown in Chapter I, do not necessarily have to be evidenced by acts of illegality, especially within the initial planning phase. The second part of Bill C-157's definition also reflected the classical understanding of subversion's objective to overthrow or destroy. The point made by Finn and Kaplan, during the course
of the Senate hearings regarding how the terms themselves denote the notion of violence, is a valid argument, and if accepted, would have made the addition of violence redundant. However, in the case of statutory definitions involving matters of national security, such as subversion, where at its inner limit it comes closest to legitimate rights of political dissent, it was perhaps prudent to err on the side of caution, and include the phrase "by violence." Nonetheless, subversion, as argued by Kaplan and supported by a comprehensive analysis of the subject, does not in all instances have to involve violence.

The definition passed into law by Bill C-9 captures another salient point of subversion, which is lacking from the legislative definitions of New Zealand, Australia and Great Britain, which is the time element of subversive activities. In 1984, a Royal Commission on Australia's Security and Intelligence Agencies decided against using the term "intended ultimately" because it concluded it was too imprecise and indefinite an indication of the time element related to subversion. The Australian study also found the word "ultimately" suggested something very close to mere contemplation, as being insufficient to constitute subversion. While no definition could point to a precise time, applicable to all examples, the Australian Royal Commission decided that the time involved for the surveillance of subversive
activities as lying somewhere between immediacy and "the vagueness of ultimately".\textsuperscript{45}

Intending ultimately to undermine, destroy or overthrow a political system is perhaps too subjective or illusory a term, but it does recognize one of the essential dimensions of subversion. As previously discussed, subversion is not a single event, or static threat. It is multi-faceted and dynamic, with definite developmental stages, designed to achieve a very particular objective. The word ultimate in conjunction with intended, adequately captures this sometimes temporal aspect of subversion.

Bill C-9, as did Bill C-157 before it, clearly identified subversion as a separate and distinct threat whose target, unlike the other threats to Canadian national security, is purely domestic and aimed at the politically entrenched, constitutionally-established system of government in Canada. The fundamental prerequisite for subversion in Canada, as defined by Bill C-9 is to either undermine, overthrow or destroy by violence, parliamentary democracy and the Canadian federal system of government.

The definition in Section 2(d) of the CSIS Act is void of any specific reference to any group, organization, or political party, nor does it identify opposing ideologies from which subversive action could possible emerge. To this extent again, the definition in Bill C-9 is consistent with
subversion's ideological neutrality. Subversion is only a tool or methodology, to be used by any person, group or institution, left or right of the political spectrum, whose aim is to subvert one political system and replace it with another. Defining subversion, academically or politically, can be a difficult and cumbersome undertaking. The definition of subversion in the CSIS Act appears to have met this challenge, because it reflects the constituent elements of subversion. By affirming subversion as a separate and unique threat to national security, and providing a practical statutory definition, limited by degrees of necessity, to fulfil and protect the requirements of democracy, Section 2(d) of the CSIS Act appears to embody the primary tenets of subversion.
ENDNOTES CHAPTER II


2. Ibid., p. 1.

3. Ibid., p. 5.

4. Ibid., p. 3.

5. Ibid., p. 6.

6. Ibid., p. 8.

7. Ibid., p. 8.

8. Ibid., p. 105.


10. Ibid., p. 414.

11. Ibid., p. 414.

12. Ibid., p. 416.

13. Ibid., p. 416.


19. Ibid., p. 441.


22. Ibid., p. 8.


24. Ibid., p. 1:60.


26. Ibid., p. 2:45.

27. Ibid., p. 2:47.


29. Ibid., Issue No. 3, p. 3:31.

30. Ibid., p. 3:33.

31. Ibid., p. 3:35.

32. Ibid., p. 3:35.

33. Ibid., Issue No. 2, p. 2:49.

34. Ibid., Issue No. 3, p. 3:35.

35. Ibid., p. 3:36.
36. Ibid., Issue No. 2, p. 2:49.

37. Ibid., p. 2:49.


39. Ibid., p. 15.

40. Ibid., p. 15.

41. Ibid., p. 15.

42. Ibid., p. 16.


45. Ibid., p. 59.
CHAPTER III

THE DEBATE: SUBVERSION AND PARAGRAPH 2(D) OF THE CSIS ACT

The legislation responsible for the establishment of the Canadian Security Intelligence Service included the formation of an independent review mechanism, the Security Intelligence Review Committee. The Committee, as determined by the CSIS Act, consists of a Chairman, and not less than two, and not more than four, members appointed by the Governor-in-Council from the Queen's Privy Council for Canada. The functions of the Review Committee, outlined in Section 38 of the CSIS Act are:

a) to review generally the performance of the Service of its duties and functions, and in connection therewith,

i) to review the reports of the Director and certificates of the Inspector General transmitted to it pursuant to subsection 33(3)

ii) to review directives issued by the Minister under subsection 6(2)

iii) to review arrangements entered into by the Service pursuant to subsection 13(2) and (3) and 17(1) and to monitor the provision of information and intelligence pursuant to those arrangements.

iv) to review any report or comment given to it pursuant to subsection 20(a)

v) to monitor any request referred to in paragraph 16(3)(a) made to the Service;

vi) to review the regulations, and
viii) to compile and analyze statistics on the operational activities of the Service.¹

In addition to independent review, the Act establishes ministerial review by creating the office of the Inspector General, which is directly responsible to the Deputy Minister of the Solicitor General of Canada. The functions of the Inspector General, who is also appointed by the Governor-in-Council, are: "to monitor the compliance by the Service with its operational policies," "to review the operational activities of the Service;" and "to submit certificates pursuant to subsection 33(2)."²

The Security Intelligence Review Committee is required to submit an annual report with respect to its findings to the Solicitor General, within three months of each fiscal year. The Minister is then responsible for ensuring that the Committee's report is laid before each House of Parliament, within fifteen days of its receipt. In order to fulfil its review functions, the Committee is entitled to any information under the control of either the Canadian Security Intelligence Service, or the Inspector General, if it pertains to the Service's duties and functions. In addition, the Committee can demand any information it wants directly from the Director of the Service, or its employees.

In 1986, SIRC undertook its first analysis of a CSIS operational section. The unit they elected to examine was the
counter-subversion branch, or the section primarily responsible for the investigation of matters pursuant to Section 2(d). This represented a significant endeavour, given that it was an independent review of how subversive activities were investigated and analyzed by Canada's new civilian security and intelligence agency. The results of the study were included in SIRC's 1986-1987 Annual Report.

The Committee began its examination of counter-subversion by attempting to ascertain if the investigations met the statutory requirements, established by Section 12 of the CSIS Act. Section 12(1), entitled, Duties and Functions of the Service, states:

The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyze and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report and advise the Government of Canada. 3

Section 12 authorizes the Service to collect information and to investigate activities directly related to threats to the security of Canada, as defined in Section 2. CSIS may, however, only conduct investigations if it is deemed to be "strictly necessary", and on reasonable grounds be suspected of constituting a statutory threat to national security. In matters of criminal investigation, peace officers are required to establish reasonable and probable grounds -- a higher level
of suspicion -- prior to taking action under the Criminal Code of Canada. SIRC's inquiry into the counter-subversion branch attempted to determine if investigations were consistent with defined threats, and the Service's duties and functions.

For the purpose of its study SIRC used information that CSIS had inherited from the RCMP Security Service. It was collected, the Committee noted, during a period in Canadian history which was described by the McDonald and Keable Commissions as "the heyday of protest and so called New Left in the 1960's." It was the Committee's task to determine whether or not this residual intelligence also met the Act's definition of threats to the security of Canada.

The Committee's 1987 Annual Report stated there was little disagreement over terrorism and espionage being considered viable threats to national security. The difficulty lay with counter-subversion, and particularly the "grey area," in which subversive activities conflict with acts of legitimate political dissent. The Committee acknowledged, however, that there were certain examples where a few individuals continued to proclaim a belief in the need for violent revolution. SIRC's responsibility was to assess the Service's ability to properly apply the CSIS Act to this "grey area" of subversion. By so doing they anticipated identifying concerns within the counter-subversion branch, and encouraging changes to the system.
The method used by SIRC was derived from the five basic principles of intelligence gathering enunciated by the McDonald Commission. SIRC sought to ensure the means of investigation were proportionate to the gravity of the threat and the probability of occurrence, and that the rule of law had been applied. In addition, any surveillance methods undertaken by the Service had to be weighed against any damage to personal freedoms and social institutions. If investigative techniques were more intrusive in nature, SIRC wanted to be assured required levels of appropriate authorization had been obtained.

SIRC used these principles to study the Service's policy and operational procedures with respect to the counter-subversion programme. They looked at the resources which were allocated to counter-subversion compared with those deployed against terrorism and espionage activities. They also reviewed the number of paid sources, and the amounts paid for intelligence information about counter-subversion. The Committee examined the nature of the subversion files opened on Canadians, and the quantity of intelligence on these individuals sent to the government. As part of their overall operational focus, they also dealt with the Service's targeting procedures.

SIRC examined how individuals or organizations were selected for investigation. The Committee expressed concern
over the fact that organizations, as the subject of evaluation reports, were being targeted as one entity. Therefore, people were automatically being investigated based on their affiliation to a particular targeted organization. Individuals who were in regular contact with a person already the subject of an investigation were also made targets. SIRC concluded the counter-subversion programme was "casting its net too widely." They found these targeting mechanisms to be insufficiently precise because secondary or peripheral targets were becoming the subject of investigation without appropriate reference to actual threats. SIRC argued that participants in an organization who were not part of its controlling leadership, may have been unaware whether the organization harboured a hidden subversive agenda, or if it was being influenced by a foreign intelligence agency. Targeting by category was also criticized because it potentially violated individual rights and freedoms.

SIRC recognized there were real subversive threats in Canada posed by a few individuals, but generally, its conclusion was the Service was expending money and efforts on too many subversive targets. The Director of the Service informed the Committee that under five per cent of available resources were being deployed against subversion. SIRC's own estimates placed the figure at approximately ten per cent. They were unable to determine the precise number of counter-
subversion files because they were not specifically segregated from counter-intelligence or counter-terrorism files. Out of the six hundred thousand files possessed by the Service, SIRC estimated thirty thousand related directly to counter-subversion.10 Only a small number of these in turn were actually under what SIRC considered to be active investigation. In order to properly ascertain whether CSIS was investigating subversion pursuant to the statutory requirements of Section 2(d) and Section 12 of the Act, the Committee examined five counter-subversion investigations against organizations.

The Committee's review concluded that the Service was primarily concerned with foreign influenced activities within these organizations. They also recognized the existence of elements within these groups who sought to undermine Canadian institutions in order to bring about the violent overthrow of the state. Overall, however, SIRC believed CSIS was overestimating the power and influence of these organizations. They described the underlying counter-subversion branch belief that the Canadian public was susceptible to being deceived by the activities and intentions of subversive groups. By contrast, the Committee took the opinion, based on what they termed their knowledge and experience, that "Canadians are generally mature enough to resist the blandishments of the groups concerned."11
Upon completion of their inquiry into counter-subversion, SIRC determined there were two primary investigative components to counter-subversion investigations. These dealt with undue foreign influence, and the risk of violence, both of which SIRC felt could be adequately covered by the counter-intelligence and counter-terrorist sections. Only those individuals within an organization who advocated violence would become targets of CSIS. SIRC stated that "it is possible that any targeted group could undertake terrorist acts at some point, but most are not, on the available evidence, likely to do so in the foreseeable future." SIRC's final recommendation was that the counter-subversion branch should be disbanded; the re-assignment of Section 2(d) investigations to counter-intelligence if they related to foreign intelligence activities; and those containing a risk of violence associated with subversion would be transferred to counter-terrorism.

SIRC's 1986-1987 Annual Report raised a number of organizational concerns within CSIS, including recruitment, training and developmental programmes, as well as CSIS's slow pace of change away from the RCMP Security Service. To address these, and SIRC's recommendations with respect to subversion, the Solicitor General of Canada, James Kelleher, appointed Gordon Osbaldeston, a former clerk of the Privy Council, to head an independent Advisory Team. In October

The Osbaldeston Report argued that an examination of the counter-subversion programme provided an insight into the entire security and intelligence operations of the CSIS. The counter-subversion branch, it stated, should not be viewed in isolation, but rather as part of the organization as a whole. A serious study of the section, the Advisory Team felt, would illuminate most of the weaknesses inherent in the Service's entire corporate culture, including its targeting procedures. The McDonald Commission observed that a security and intelligence agency required a qualified skills mix or intelligence framework, in order to enhance its ability to differentiate correctly between subversion and dissent. Osbaldeston recognized that part of the problem with counter-subversion was the fact it was not supported by a fully functioning security and intelligence infrastructure. The Advisory Team suggested that a framework of a blend of analytical and investigative skills was required to provide targeting decisions related to counter-subversive operations. An essential element of the security and intelligence system, Osbaldeston stated, was an analytical component capable of determining strategic subversive threats.
In reference to Canadian national security he noted:

There are no sanctuaries or safe havens from which individuals can engage with impunity in activities threatening to the security of Canada.\textsuperscript{13}

The Advisory Team stated that subversion which originates in the domestic environment seldom creates the same danger and urgency as terrorism or espionage.\textsuperscript{14} Domestic threats which pose significant danger, the Report suggested, could possibly be regarded as terrorism. While less violent forms of subversive activity could be assessed as threats to the security of Canada by analyzing open sources of information, Osbaldeston acknowledged that in certain infrequent situations subversive threats may be such that they would warrant more intrusive investigative measures.

Through their own examination of counter-subversion files, the Advisory Team concurred with SIRC's findings that too many CSIS resources were being committed against low level subversive threats.\textsuperscript{15} They also agreed the linkage between "strictly necessary" and paragraph 2(d) had not been adequately made by the Service. As a result, Osbaldeston supported SIRC's recommendation to eliminate the subversion branch, and re-assign its duties and functions to the appropriate areas of counter-intelligence and counter-terrorism. The remaining, or residual files relating directly to Section 2(d) were to be maintained, but subject to assessment through open information and in conjunction with a
revised targeting policy.

In February 1987, the Solicitor General accepted both the recommendations of SIRC and the Advisory Team, and disbanded the counter-subversion branch. The necessary subversion files were re-allocated to counter-intelligence and counter-terrorism sections. The vast majority of former counter-subversive targets were assigned to the Research and Analysis Production Branch of the Service, which would monitor their activities only through open information sources. In addition, if the subversive threat reached a magnitude requiring more intrusive levels of investigation, authorization as the Advisory Team and the McDonald Commission had recommended, would be required directly from the Solicitor General.

In subsequent annual reports, SIRC continued to report on the Service’s progress in dismantling and re-assigning the resources of the former counter-subversion branch. They also documented various subversive issues which came to light in the course of their ongoing review of the Service’s duties and functions. Their 1987-1988 Annual Report, recorded the actual number of counter-subversion files inherited from the RCMP Security Service at approximately 54,000. By 1988 these had been purged to 3,000 and transferred, as recommended by the Independent Advisory Team to the Analysis Production Unit.

However, SIRC’s concern over the entire subversion issue
was re-kindled that same year by the Boivin affair in which an official of the Confederation of National Trade Unions, Marc-Andre Boivin, was arrested in Quebec on charges relating to suspected bombings. The media, learning he was a CSIS source, reported that he may have been an agent provocateur targeted against the labour movement.\(^{17}\) The investigation conducted by SIRC revealed Boivin had originally been a source of the RCMP Security Service as early as 1973, when he was used to monitor criminal and subversive activities within labour organizations. In 1984, he was re-directed to provide information for CSIS against communist elements and foreign influenced activities.\(^{18}\) As a result of its review, SIRC discovered that CSIS still held files from the 1970's when the Security Service actively investigated Canada's labour movement. CSIS and the Solicitor General rectified the situation by having the files removed, but again SIRC had demonstrated an inability on the part of the Service to appropriately discern, and deal with matters relating to subversion.

In 1988-1989, SIRC examined the role of the CSIS in Canada's peace movement. Prior to 1984, the RCMP Security Service investigated Canadian citizens because of their association with the Communist Party of Canada, provincial communist parties, Soviet government officials and Soviet front organizations, which brought them within the ambit of
Since the Security Service considered the peace movement to be infiltrated by the Communist Party of Canada and the Soviet government, files were opened on Canadians who joined various peace organizations. These files later became part of the holdings of the counter-subversion branch. SIRC's subsequent review of them revealed they contained information which was of no security interest. The RCMP Security Service had, according to SIRC, also cast its net too wide when it undertook to investigate the peace movement without proper analysis or evaluation. By 1987, even though many of these inherited files were already in the process of being destroyed, SIRC had to deal with yet another negative issue concerning subversion.

In the 1989-1990 Annual Report, there were indications the Committee had begun to question the legitimacy of the activities described in paragraph 2(d) of the CSIS Act. Prior to providing comment on the status of subversion in 1990, the Committee, in a footnote, explained they wanted it immediately understood they used the term subversion only as a convenience. The term subversion and "its relatives", they stated, are not found in the CSIS Act and without an authoritative definition, subversion "too easily becomes a ragbag in which all sorts of people, from oddballs to psychopaths, are tossed together without distinction." Nonetheless, since it was a word used by CSIS and many others,
and rather than having to invent a substitute, the Committee indicated that it would continue to use it in their reports.

CSIS had reduced the number of subversive files held on individuals to approximately 1400 by 1988. The Director of the Service at the time informed the Solicitor General that those particular individuals "show a continuing level of participation in their organizations and therefore, are assumed to understand and accept the underlying and often covert objectives of their organizations." In 1990 the files in question were placed in a special low level monitoring mode while still under the auspices of the analysis branch. When SIRC examined how much intelligence had been added since 1988, through open sources of information, they discovered the majority had remained dormant. CSIS stated that it was not of sufficient priority to warrant the allocation of scarce analytical resources. For SIRC it was "clear that CSIS does not regard the individuals in the residue as very formidable targets."

The review of the remaining counter-subversion files also revealed much of the data had been accumulated on "above board activities in federal and provincial elections." While SIRC found no misuse of this information by CSIS, the Committee stated that it did not excuse what seemed to be disproportionate interest in the domestic electoral process. In the Committee's estimation, the analysis branch was unable
to demonstrate that the residual files actually posed a threat to national security, as defined by paragraph 2(d) of the CSIS Act. SIRC concluded that most of the files would also not withstand the scrutiny of CSIS targeting procedures. In their view, the organizations concerned looked "a sorry sight to us, the tattered remnants of discredited movements whose members struggle against odds to keep the spark of revolutionary rhetoric from sputtering out completely."25

Denied the benefit of actually being able to analyze, first hand, the counter-subversion files to test them against the theoretical definitions or concept of subversion, it is difficult to provide objective comment on the conclusion drawn by SIRC in its 1986-1987 Annual Report. It is also not possible to argue whether or not the counter-subversive, or residual files, would be considered threats to national security under the definitions of subversion contained in the legislation of the western states described in this paper. However, it may be feasible to provide objective comment with respect to SIRC's findings on paragraph 2(d), based on the material and information detailed in its own annual reports. Analysis of this data may provide a better understanding of why SIRC, and the Independent Advisory Team, called for the dismantling of the counter-subversion branch. Was it due to an inherent weakness in the legislative definition of subversive activities, or was it the information itself which
had been obtained at an earlier date, and by a different Service? SIRC acknowledged that CSIS had inherited the vast majority of its subversive intelligence from the RCMP Security Service, which had operated without the benefit of statutory guidelines. It carried out its activities in the 1970's during the cold war when communism was still considered by some to be a viable political-economic ideology. The Mackenzie Commission, as noted, believed threats to Canadian security were indelibly linked to communism and the east-west conflict.

The intelligence accumulated by the RCMP Security Service was also collected under a different mandate, the 1975 Cabinet Directive. The Role, Tasks and Methods of the RCMP Security Service gave the Security Service a broader interpretation of subversion, which allowed for the capture of a wider range of subversive activities. The Cabinet Directive provided for the investigation of activities directed toward accomplishing governmental change within Canada by force, or violence, or any criminal means; activities of foreign or domestic groups directed toward the commission of serious acts in Canada; and the creation or exploitation of civil disorder. They were also charged with the responsibility of deterring, preventing and countering individuals and groups in Canada who posed a threat to national security. CSIS, by contrast, is not permitted to take any counter measures, since it is restricted
by statute to only advise the government. Section 2(d) also provides a more narrow definition of subversion in which investigations are conducted against activities directed toward undermining by covert unlawful acts or those activities intended ultimately to lead to the destruction or overthrow by violence of the constitutionally established system of government in Canada. It seems plausible, from this objective perspective, to expect that much of what the Security Service had collected would not be permitted under the provisions of the CSIS Act.

SIRC examined the residue files in terms of whether or not they met the conditions of "strictly necessary." This particular phrase is subjective in nature, and made more cumbersome by the fact it is not legislatively defined or familiar in common law. Osbaldeston and the Advisory Team recognized the difficulty and ambiguity associated with the phrase and subsequently recommended that the Solicitor General's Department, in consultation with the Department of Justice, undertake to provide clarification and interpretation with respect to its application. The Review Committee's 1986-1987 Report found the residue files to be largely not "strictly necessary," and as such inconsistent with the Service's duties and functions. This intelligence, however, was not collected under the definition of paragraph 2(d) of the CSIS Act. It is therefore not entirely surprising to find
information collected in 1975, under a different set of principles, failing to meet the 1987 standards of strictly necessary.

SIRC's examination of the counter-subversion branch represented their first operational review, and as such their first exposure to the Service's investigative targeting procedures. The Committee was critical of targeting by category, which basically, through guilt by association, appeared to have resulted in Canadian citizens possibly erroneously being labelled as threats to national security. The targeting procedures, however, were not germane or unique to counter-subversion, but rather a CSIS-wide policy. If the Committee would have initially reviewed counter-terrorism instead of counter-subversion, it is likely the same problems, and criticisms associated with targeting would have been levied against their activities as well. Accusing counter-subversion of casting its net too widely as a result of targeting by groups, may have unintentionally created a prejudice against this particular section, rather than the Service as a whole.

SIRC did not clearly distinguish between counter-subversive files opened after 1984, specifically under paragraph 2(d), and those which were inherited. It did report that between approximately 1988 and 1990 no new intelligence was added to the residual files, and no active investigations
were authorized by the Solicitor General. From this the Committee concluded the Service did not regard the cases involved as being very threatening to national security. They suggested perhaps other priorities, such as terrorism, may have precluded the Service from closely monitoring information relative to the subversive files. During the period in question, there were unparalleled international political changes occurring in Eastern Europe and the Soviet Union. The changing world order, the demise of the cold war, and the failure of communism as a political-economic ideology, could have naturally created an inverse impact on Canadian national security, with respect to certain related subversive activities. The reason for the lack of any new intelligence being added to the files, may have been a justified consequence of an actual decline in Soviet foreign interference, and related subversive communist activities.

In a 1988 paper presented at a conference on Advocacy, Protest and Dissent at Queen's University, Reg Whitaker argued that for the left the means are less important than the ends. Certain left wing groups may advocate change through the democratic process while others feel the necessity for extra-parliamentary or revolutionary violence. However, they are distinguishable by their methods not their aim. Whitaker argues further that there is no evidence communists in Canada ever actually conspired to effect the violent overthrow of the
Canadian state. More of [their] activities were in themselves 'revolutionary', even though they were intended to fit into a long-term political strategy that foresaw the sharpening of the class struggle and the eventual development of a truly revolutionary situation.

Whitaker recognized that such activities could be seen by a security service as being subversive actions seeking to undermine the constitutional government from within. Subversion, he believed, might therefore be understood as a preparatory stage in the process of revolutionary overthrow of the government.

The subversive threat associated with communism, he points out, was largely a product of the Cold War. By 1988, he said, the idea of subversion was out of focus and communism as a threat to national security had fallen into disrepair. The decline of the Cold War paradigm, he believed, could be expected to erode the legitimacy of CSIS in relation to the left. As the former Soviet Union collapsed and the Cold War ended it would be reasonable to assume that any security service charged with the responsibility of assessing the subversive threat would react accordingly.

The demise of the Cold War would also be expected to result in a decrease in espionage against Canada and the west, since the USSR and its former East Bloc allies were largely considered responsible for such activity. But while spying
may decrease or shift in focus from military to economic considerations, espionage activities still remain a national security issue and a threat. The same holds true for the activities described in paragraph 2(d) since subversion, while historically closely associated with communism is not exclusive to any one political ideology. What has diminished is the validity of the aim and the leftist ideology in Canada, not the methodology.

Between 1986 and 1989, SIRC had been directly involved in several negative, and perhaps discouraging, experiences involving the Service's entire counter-subversion programme. A great deal of the RCMP Security Service intelligence was deemed inconsistent with the collection and investigative requirements of the CSIS Act. In subsequent years, the Committee seemed to be continually grappling with counter-subversion, such as the Boivin Affair, the labour movement, and again in 1988 in conjunction with their study of Canada's peace movement. Given these circumstances, and the fact that SIRC believed the responsibilities of paragraph 2(d) could be handled by the counter-intelligence and counter-terrorism branches, it came as little surprise when in 1989 SIRC put forward its recommendation to the Five Year Parliamentary Review Committee of the CSIS Act, to repeal Section 2(d).
CHAPTER III ENDNOTES


2. Ibid., Section 30.

3. Ibid., Section 12.


5. Ibid., p. 33.

6. Ibid., p. 34.

7. Ibid., p. 36.

8. Ibid., p. 37.

9. Ibid., p. 35.

10. Ibid., p. 38.

11. Ibid., p. 39.

12. Ibid., p. 40.


15. Ibid., p. 23.


17. Ibid., p. 16.

18. Ibid., p. 16.

20. Ibid., p. 36.


22. Ibid., p. 45.

23. Ibid., p. 45.

24. Ibid., p. 46.

25. Ibid., p. 47.

26. C.E.S. Franks, Dissent and the State, (Toronto, Oxford University Press, 1989), Left-Wing Dissent and the State: Canada in the Cold War Era, by Reg Whitaker, p. 191.

27. Ibid., p. 192.

CHAPTER IV

THE SPECIAL PARLIAMENTARY REVIEW COMMITTEE'S RECOMMENDATION TO REPEAL PARAGRAPH 2(d) AND THE GOVERNMENT'S RESPONSE

In 1989 a five year comprehensive parliamentary review of the provisions and operations of the CSIS Act was undertaken pursuant to the requirements of paragraph 69(1) of the Act. A special all party House of Commons Committee, under the chairmanship of Blaine Thacker was established in order to conduct the review. The Security Intelligence Review Committee (SIRC) contributed to the parliamentary hearings by submitting a special supplementary report entitled Amending the CSIS Act: Proposals for the Special Committee of the House of Commons, 1989.

One of the primary amendments recommended by SIRC was the repeal of Section 2(d) from the definition of threats to the security of Canada. SIRC stated, that "it is our conclusion, in light of the evolving experience with paragraph 2(d), that it should now be repealed....We realize that there can be a real threat to security posed in any democracy from domestic sources, but we believe that other parts of the mandate offer adequate protection to the security of Canada." They referred to their 1986-1987 Annual Report in which they noted that the activities of groups specifically targeted as part of counter-subversion, also met the criteria described in
paragraph 2(b): foreign influence activities, and paragraph 2(c): politically motivated violence. In 1989, a year after the counter-subversion files had been transferred to either the counter-intelligence or counter-terrorism units, SIRC pointed out that not one investigation was undertaken solely on the basis of activities described in paragraph 2(d). They also argued for the repeal of 2(d) by citing the fact the legislation itself recognized the need for special restrictions by limiting the duration of judicial warrants applicable to subversion to a maximum of sixty days. Federal court warrants related to the activities of espionage, foreign influence and terrorism could in contrast be issued for up to twelve months. SIRC's final reason for the removal of paragraph 2(d) was based on their assessment that it had been the most criticized and controversial provision of the entire Act.²

Opposition to paragraph 2(d) and subversion as a whole created one of the central debates during the hearings of the Five Year Review Committee. In the final analysis the Parliamentary Committee was to recommend to the government, in their report, In Flux: But Not in Crisis, that paragraph 2(d) be struck from the CSIS Act. In order to examine and ascertain possible explanations for the Committee's decision, it is necessary to thoroughly review the testimonies given, both in favour and in opposition, to the motion to repeal
paragraph 2(d). It is essential as well to examine the opinions expressed by representative members of the Committee during the actual procedures. This may help to reveal possible subjective, as well as objective biases, which may or may not have influenced their final recommendations.

Murray Rankin, a professor in the Faculty of Law at the University of Victoria, who served as legal advisor to SIRC during its preparation for the Five Year Review, testified before the Committee that the files held by the counter-subversion branch represented no threat to national security. As a result, he proposed to SIRC that the Section 2(d) mandate for domestic subversion be eliminated. Rankin informed the Committee that Canada was exposed to threats emanating from terrorism, espionage, and foreign influence activities. Concerning subversion, he stated,

I do however draw back from domestic subversion. Even as we think how in the future we want to have a security intelligence agency with all the necessary tools, I am not persuaded at all that we need any mandate to deal with counter-subversion. That, to me, seems very much like a cold war vestige and, for all the reasons articulated in the report to you by SIRC, I see no reason for retaining the 2(d) mandate.

Jacques Shore, representing the Ontario Law Union, who assisted SIRC with their 1986-1987 study of the counter-subversion branch, testified he had been surprised by what he saw in the related files, and by the fact much of the
intelligence pre-dated the 1984 formation of the CSIS. In defining threats to national security, Shore advised the Committee there should at least be a direct emphasis on identifying an element of violence. Eliminating paragraph 2(d) would, he stated, not adversely affect the Service, since the serious or more dangerous aspects associated with subversive activities could be covered by the counter-intelligence or the counter-terrorism branches.

Peter Russell, a professor of political science at the University of Toronto, also spoke out against retaining paragraph 2(d). In deciding the issue, he stated, one must balance the two constituted risks involved. The first involves individuals or organizations whose objective it is to attempt to subvert the government and destroy democracy. The second risk concerns the existence of a governmental security apparatus empowered to investigate and penetrate unorthodox radical, left or right wing subversive elements. According to Russell, a security agency operating under a mandate of this nature would have a greater negative impact on political discourse and democracy in Canada than those individuals who are prepared to advance radical political philosophies. The idea, he said:

that surreptitiously some sinister underground group can get in and get hold I find just too close to the fantasy level to make me say it is a real risk, or because I am so scared to live with the one and empower a security service to go prowling
around looking at people because of their ideas, not because they are about to do anything violent and not because they are directed from abroad by some intelligence organization, but because they just have some bloody dangerous ideas and we just do not like the smell of them. That is a risk I would rather avoid. 8

In less passionate tones the Canadian Bar Association concurred with Russell's primary point by recognizing that "The national security of Canada must be assured. Equally important are the safeguards which must be built into our system so that the ordinary law-abiding citizen does not have his rights unnecessarily infringed." 9 The Association also based its support for the repeal of paragraph 2(d) on the fact that the Independent Advisory Team had concluded that its activities could be covered by the other threat definition sections of the Act. 10

Reg Whitaker of the Department of Political Science, York University, also agreed that since the government had in fact disbanded a branch dedicated to counter-subversion, a similar argument could be made to remove paragraph 2(d) from the Act. On its own, he felt, the section was dangerous because it dealt with such things as an individual's ultimate intentions. Paragraph 2(d), he stated,
is really dealing in terms of people's ideas. That was the problem with the counter-subversion branch of the Service. It was really directed against ideas and this is in fact improper....if we are talking about what really ought to trigger their interest and what ought to trigger the kinds of intrusive surveillance and so on, the powers that
CSIS has to do that, this is where things move beyond ideas into potential acts that may be much more serious problems.\textsuperscript{11}

Whitacker also believed that the activities covered in paragraph 2(d) could be captured under the purview of paragraph 2(b), and 2(c) of the definition of threats to the security of Canada.\textsuperscript{12}

Representing the Ontario Law Union, Paul Copeland, testified he did not believe the repeal of paragraph 2(d) would restrict the activities and the mandate of the Service.\textsuperscript{13} Subversion as a group of people getting together and planning to change government policy or causing the government to fall, he stated, was less of a danger to the democratic process than having an organization established for the purpose of monitoring such activity.\textsuperscript{14} It is very destructive, he claimed, "to the democratic process that every time you get involved in discussing some sort of governmental change within the definition of 2(d) you are looking over your shoulder because you think the guy next to you is from CSIS. Certainly the peace groups feel that way and certainly some of the native community feel that way."\textsuperscript{15}

The Canadian Civil Libertarian Association, and Allan Borovoy have consistently argued that threats to national security should contain an element of illegality. According to Borovoy, criminality would rightly bring these acts within the jurisdiction of the Criminal Code. He informed the
threat which could be practised in Canada and not involve illegality. This would also include domestic threats such as subversion. The investigation of activities not based on criminality, Borovoy asserted, would be a violation of civil liberties. He informed the Committee he was also concerned about how a security agency would be able to gather evidence on "ultimate intentions", which tended to put a premium on speculation. The Civil Libertarian Association also supported the recommendation to repeal section 2(d), because it suspected its broad mandate has been misused by the Service.

The Special Committee also heard testimony from several witnesses who spoke in favour of retaining paragraph 2(d). Gordon Osbaldeston, Chairman of the Independent Advisory Team testified that, prior to undertaking his study, he had not anticipated recommending the abolition of the counter-subversion branch. He believed if 2(d) existed as a threat, it followed a unit was necessary to investigate such activities. In the final analysis, however, he upheld disbanding counter-subversion, because in its extreme manifestation, he believed, it could be covered by paragraph 2(b) and 2(c) of the CSIS Act. Nonetheless, he informed the Committee, he had been surprised by SIRC's call for the ultimate repeal of paragraph 2(d), since, in his view, a subversive threat still existed. He stated, "The fact is we
are dealing with intelligence and that is before the fact, not
criminal activity after the fact. My view is that we want a
capacity to move before that subversion takes off. We do not
want to find after the fact that we should have known. I
think the case is made that the danger of confusing dissent
with subversion is so great that one should take the risk of
subversion. I take the other view, that the possibility of
subversion is there."\textsuperscript{19}

Former Solicitor General, Robert Kaplan, one of the
initial architects of the CSIS Act, told the Committee the
interpretation of subversion, contained within paragraph 2(d),
represented a stricter definition than had originally been
intended. The first draft of the legislation, he advised,
contained a lower threshold for subversion by providing for
the surveillance of any kind of covert act. The CSIS Act
eventually passed by parliament restricted covert activities
to unlawfulness, which Kaplan believed limited paragraph 2(d)
as a definition of subversion. The dictionary definition of
subversion, which does not limit subversive activities by the
inclusion of illegality, Kaplan testified, was what he
initially sought to incorporate into the legislation.
Subversion, he stated, "is something which may approach
criminality, but might not necessarily. In other words, if we
suspect subversion let us start examining it even if criminal
activity might not be involved."\textsuperscript{20}
While Kaplan obviously favoured maintaining paragraph 2(d), he acknowledged it was still difficult to convince people that surveillance of subversive activities was in the national interest. He urged the Committee to "keep this section, but this section is not as valuable from the point of view of national security as one with a larger definition of subversion would be." Kaplan supported the triggering mechanism which required the Solicitor General to approve any paragraph 2(d) investigations, and he even suggested the Committee consider including this proviso in the legislation. He concluded by reminding the Committee that subversion was a useful and potentially important field of investigation, given the fact many states in the international political environment had been undermined and destroyed by subversive activities.

Michael Pitfield, former chairman of the Senate Special Committee, which examined and made recommendations concerning the CSIS Act, also spoke in favour of retaining paragraph 2(d). He suggested the Committee take steps to formalize its availability only on very specific release by the Minister. Pitfield explained, that as a public servant he felt there was always the potential for subversion to periodically become a substantive threat. As such, in referring to paragraph 2(d), he stated that he did "not think Canada can carry it indifferently at difficult moments in history. I would tend
to keep the definition of the threat."\textsuperscript{22}

The former Director General of the RCMP Security Service, John Starnes, pointed out to the Committee, that at a time when parts of the world, including Canada, were experiencing political and economic asymmetry, the definition section of the CSIS Act could take on a new importance. Accordingly, he advised the Committee to proceed cautiously about changing the definitions of threats to national security in any substantive way. Allowing paragraph 2(d) to remain, he argued, would permit the Solicitor General to initiate subversive investigations against certain activities not classified as foreign influence, or politically motivated violence.

As an example, Starnes explained to the Committee how attempts by a Quebec separatist organization to declare independence could possibly fall within the jurisdiction of paragraph 2(d), if their activities involved covert acts and violence.\textsuperscript{23} Systematic, clandestine and unlawful attempts by a Quebec independence movement to gather intelligence and penetrate the federal government would also, in his opinion, constitute subversion. John Brewin, MP for Victoria, challenged the assertion for the need for paragraph 2(d) in order to investigate such activities. A Quebec separatist party seeking to attain independence from Canada by advocating violence as a legitimate means, Brewin felt, could be covered by section 2(c) of the Act, as politically motivated violence.
Infiltration of the federal government in order to collect intelligence or influence policies, in his view, would also amount to espionage, and therefore appropriately fall within the jurisdiction of paragraph 2(a) of the CSIS Act.  

Blair Seaborn, who previously served as the coordinator of the Privy Council Office, informed the Committee he believed it would be prudent to maintain Section 2(d) in order to have the means necessary to investigate such issues when and if it became necessary in the future. He thought, "on balance it would be unwise to remove paragraph 2(d) from the legislation. While domestic subversion, I would readily agree, would not appear at this time to constitute a significant threat, possibly no threat at all, we cannot be sure that will always be the case."  In rebuttal, Brewin pointed out that since the overthrow of the government had not taken place in over one hundred and twenty years, there was little reason to suspect that it would need such protection. The federal government, he proposed, only wanted to maintain paragraph 2(d) in order to permit it to continue to engage in special activities related to domestic issues. Ministerial restraints placed on the use of section 2(d), he claimed, were only voluntary, and would be dropped by the government whenever it thought it was really threatened. Seaborn reminded him that subversion was not a threat against a particular perspective of a government, but rather the actual
fundamental nature of the political system. The federal government, he stated, had been exposed to such threats during the 1970's and there was no reason to assume they would not re-occur again in the future. The Vice-Chairman of the Committee, Maurice Tremblay, commented that the acceptance of something which may happen was a leap of faith which members of Parliament had no right to make.28

One of the more interesting presentations made to the Committee was by the Canadian Jewish Congress. Their arguments for the retention of paragraph 2(d) reflected an understanding of the theoretical and practical aspects of subversion. It was also the only testimony which significantly attempted to demonstrate how activities considered unique to paragraph 2(c), the terrorism section, did not necessarily encompass subversive activities, as described in section 2(d).

The Congress testified that the existence of renewed activism of organized, right wing, extreme racist groups in Canada represented an anti-social and anti-democratic threat to national security.

The activity of extremist racist groups in this country constitute a potential threat to the status and the very physical security of minority communities, as well as to Canada's open, democratic and pluralistic state.29

Eric Vernon, Director of Legislative Analysis and Director of the Law and Social Action Committee of the
Canadian Jewish Congress, stated his organization not only advocated the retention of paragraph 2(d) but recommended it be enlarged to include threats against the democratic pluralistic society of Canada. The Congress proposed 2(d) be amended to read:

unlawful activities directed toward undermining or directed toward or intended ultimately to lead to the destruction or overthrow by violence of either Canada's constitutionally entrenched democratic and pluralistic society. 30

This broader definition, Vernon argued, would provide the CSIS with the ability to investigate attempts by individuals or groups to subvert Canada's wider polity. He also recommended that paragraph 2(d) not be utilized in isolation, but rather as one which further defines and complements paragraph 2(c).

Responding on behalf of the Committee, John Brewin suggested paragraph 2(d) would be unnecessary if the meaning of "political objective" associated with 2(c) was clarified. 31 Paragraph 2(c), he stated, gave the Service the mandate required to investigate the threat of racism against communities and individuals in Canada. Leaving Section 2(d) in the CSIS Act, he stated, permitted the Service to conduct undesirable activities, "particularly given some of the other history in this country of police interference in the civil liberties of Canadians." 32

Brewin's comments and position with respect to paragraph 2(d) sparked a degree of debate over its viability, and the
concept of subversion as an independently identifiable national security threat. Vernon informed the Committee that the Congress was concerned the Service's mandate would be unduly restricted if limited to paragraph 2(a), (b) and (c) activities of the CSIS Act. He thought this would result in the Service's inability to investigate and advise the government accordingly on subversive activities germane to paragraph 2(d). It was important, he stated "that one not lose sight of the fact that the aim of these extremist racist groups is not only to threaten the physical security of certain vulnerable minorities, but at one and the same time they have a very, very clear subversive political objective, which is to undermine and indeed scuttle the system of government of Canada as we know it and as we understand it in the polity of Canada."  

Brewin nonetheless felt the activities referred to by the Congress could adequately be captured by paragraph 2(c), since they would involve the commission of violent acts for the purpose of achieving a political objective. The Congress disagreed and indicated they perceived the issue to be more complex. Racist groups, they advised, did not usually have a clearly defined political objective, and seldom do they declare their political intentions as objectives exclusively related to governmental affairs. It is their tendency to announce political objectives only after they have utilized
subversive methods to attain power. In a sense, Vernon concluded this "is a graver type of activity in its ultimate consequence, because it would mean the destruction of Canada as we know it."^34

An examination of the far-right organizations in Canada has been conducted by Stanley Barrett. He asserts that the aim of organizations in Canada such as the Ku Klux Klan, Western Guard, the Nationalist Party and the Aryan Nations is to rebuild the country on a racial basis by violent means, if necessary.^35 His description of the objectives and methodologies of the far-right organizations indicate that the nature of the threat they pose could be labelled subversive:

The peculiar nature of the far-right threat to the Canadian democratic system is that to some extent it constitutes an attack from within, generated in part by the properties of capitalism itself and therefore all the more seductive and insidious.^36

While Barrett does not believe the racist right should be allowed to roam around unchecked, he does not agree that CSIS should be involved in monitoring their activities. In his opinion, the radical right is a moral and legalistic matter and should be dealt with accordingly. If they engage in acts of violence then they should be prosecuted under the criminal code of Canada. If they offend the morality of the land, the laws should be changed or amended to address the racial prejudice and discrimination. As the Canadian Jewish Congress pointed out, however, the ultimate objective of such groups is
not always clearly understood or stated publically. A paragraph 2(d) examination of their activities could provide the government with advance intelligence on the actual nature and extent of the threat. In the course of any CSIS investigation, if violence is detected then under Section 19 of the CSIS Act, the Service may disclose such information to the police.

In its September 1990 final report to the government, the House of Commons Special Committee on the Review of the CSIS Act pronounced the issue of subversion and paragraph 2(d) had been one of its most controversial and difficult tasks. The report outlined briefly how those who called for its repeal felt investigations conducted under paragraph 2(d) infringed on individual rights and freedoms. The vagueness of the section, opponents claimed, resulted in excessive speculation and unwarranted targeting of legitimate activity. Conversely, those in favour of retaining section 2(d), the Committee pointed out, admitted subversion was not a major threat, and while they acknowledged many of its activities could be captured by paragraphs 2(a), (b) and (c) of the CSIS Act, they still felt there was a requirement to forewarn the government of possible future subversive activities. The Committee came to the conclusion to recommend paragraph 2(d) of the threats to the security of Canada contained in section 2 of the CSIS Act be repealed. The primary reason for their
decision focused on the assumption that many of the activities caught by paragraph 2(d) could be dealt with under paragraphs 2(a), (b) and (c) of the definition of threats to the security of Canada section. As a consequential amendment, the Committee was also compelled to recommend the repeal of section 21(5)(a) of the CSIS Act, which limited the duration of judicial warrants issued under paragraph 2(d).

The Special Committee's decision to propose repealing paragraph 2(d) was partially based on the assertion that investigations pursuant to 2(d) would result in unwarranted targeting and the infringement of individual rights and freedoms. This position was reinforced by several witnesses who testified against paragraph 2(d). A review of their testimony, however, suggested that perhaps they may have displayed a basic, fundamental lack of knowledge and understanding of both the Service's overall mandate and subversion itself.

During his testimony, Russell made reference to "dangerous ideas" and "looking at people because of their ideas not because they are about to do anything." Professor Whitaker also stated paragraph 2(d) really deals with "people's ideas" and was "directed against ideas". Paul Copeland claimed it was a danger to the democratic process when "every time you get involved in discussing some sort of governmental change within the definition of 2(d) you begin to
look for the presence of the CSIS." The usage and reference to terms such as ideas and discussions are not criteria on which CSIS is permitted to undertake any investigation, let alone against subversion. The definition in paragraph 2(d) refers to "activities" not ideas. These activities also have to be covert, unlawful or contain an element of violence in order to constitute a subversive threat. Ideas and discussions among individuals about governmental change of any kind are specifically protected against investigation by the addendum to section 2, which precludes the Service from investigating lawful advocacy, protest or dissent, unless carried on in conjunction with a defined threat.

This particular point did not surface during the hearings, nor was there discourse on how Section 12 of the CSIS Act, which outlined the Service's duties and functions, impacted on Section 2. The Service is only able to initiate investigations against legislatively defined threats to national security when reasonable grounds to suspect are established, and the investigation is deemed to be strictly necessary. It would be difficult to justify the surveillance of ideas and discussions as strictly necessary. Since these caveats and investigative restrictions did not form part of the Committee's paragraph 2(d) debate, it is hard to explain how they recommended paragraph 2(d) be repealed.

There were indications as well that members of the
Committee may not have had a clear understanding of some of the practical applications of subversion. Committee member, John Brewin, during Blair Seaborn's testimony, stated that, Ministerial restraints placed on paragraph 2(d) would be dropped by the government whenever it thought it was being threatened. Seaborn correctly informed him that subversion, as defined in the CSIS Act and elsewhere, was a threat against the constitutionally established system of government, and not a particular political party operating within the system. The politicalization of the paragraph 2(d) issue, possibly begun by Brewin's comments, was exacerbated by the example of a Quebec separatist organization being a possible target under paragraph 2(d). The notion of Quebec separatist activities falling within the investigative ambit of paragraph 2(d) naturally resulted in criticism, and became a significant concern especially for Vice-Chairman Maurice Tremblay. In response to Russell's testimony, Tremblay stated,

let us be honest here, paragraph 2(d) existed solely to target Quebecers. It was strictly for that purpose. SIRC itself recommends the deletion of this paragraph....we do not need 2(d), 2(d) was there simply to give the police powers it is unwilling to give up....I see this legislation as an aberration, particularly paragraph 2(d). Its maintenance or amendment is still being discussed today, when it was passed in the first place simply because of one people, one society that wants to build its own democracy. We are just playing private eye here to try to figure out whether these are good little Quebecers or bad little Quebecers.40
Following John Starne's comments with respect to Quebec separatists and paragraph 2(d), Tremblay stated:

you alluded to the P.Q. by mentioning it is an example. Don't you think that a political organization such as the P.Q., democratically constituted and publicly known is much less subversive than an organization which sets fire to barns, steals lists, etc.\[41\]

Clearly, Tremblay's remarks, intentionally or not, tended to politicize the paragraph 2(d) debate. They also reflect a possible bias against the former RCMP Security Service for its previous investigation of activities which occurred in Quebec during the 1970's. Additionally, Tremblay's comment that paragraph 2(d) was legislatively passed because of one people and one society's desire to build its own form of democracy is a political statement and devoid of relevance to the debate over subversion as a threat to Canada as a whole.

There is no available documentary evidence to indicate what impact the opinion of certain individuals had on the Committee's decision to recommend the repeal of paragraph 2(d). In its report the Committee acknowledged it had not been unanimous. Identifiable support was expressed by members of the Committee for the retention of paragraph 2(d), but more in terms of practicality than necessity. Blaine Thacker, the Committee's Chairman, felt an argument could possibly be made to retain paragraph 2(d) in order to permit SIRC and other parliamentary committees to examine the subversive
investigations conducted by CSIS. If subversion were amalgamated with the other definitions of threats it would be hidden and therefore cause difficulty in determining if rights and freedoms were being violated.\textsuperscript{42} There was also some support to maintain paragraph 2(d) in order to augment and contribute to the determination of government security clearances. Derek Lee, a member of the Committee felt that without comment on a person's subversive activities, security clearances would unfortunately be limited to whether or not an individual was a terrorist, spy or foreign operative.\textsuperscript{43}

In February 1991, the Solicitor General of Canada provided the government's response to the Report of the House of Commons Special Committee on the Review of the CSIS Act in their report entitled: \textit{On Course: National Security for the 1990's}. The government asserted that definitions of threats to Canadian national security, established by parliament, were intended to set outer limits on investigations which made them durable and still applicable. They re-emphasized the fact they are "activity-based" definitions, and not ideological in their conception, and as such continued to meet the challenges of changing domestic and external threats. The government recognized the Special Committee's suggestions for refining the threat definition section, but felt amending the CSIS Act in this area would be an unproductive exercise.

in the government's view, the present definitions
combined with the existing statutory limitations and Ministerial directions, ensure suitably rigorous policy standards and operational interpretations to provide a balance between the Service's needs for discretion in investigating threats to the security of Canada, and Canadian's expectations that their rights will be protected.\textsuperscript{44}

The government also acknowledged the concerns expressed by some witnesses who testified during the hearings, but considered much of their criticism to be the result of unnecessary apprehension rather than evidence of a specific problem related directly to paragraph 2(d).\textsuperscript{45} The controversy over subversion, as defined in section 2(d), the government reported, was not due to the definition itself, but the way it had been earlier implemented during the Service's inception and transition period. The ministerial authorization, required prior to the Service undertaking investigations beyond open published information, the government believed, appropriately limited the scope and intensity of the Service's activities under paragraph 2(d). As justification for their final decision to retain paragraph 2(d) in the CSIS Act, the government stated:

While a particular threat may not be considered especially serious at a given time, this would not, in the government's view, justify removing it altogether from the mandate of the Service, thereby precluding the government from ever receiving advice on the issue in the future.\textsuperscript{46}

The government reaffirmed the need for an effective security and intelligence service capable of combating
terrorism, defeating espionage activities, and preserving and protecting Canadian democracy.\textsuperscript{47} Specifically the government identified five national security issues which were provided to CSIS as priorities for the 1990's. These included assurance of public safety against acts of terrorism; security and protection of government assets; economic security or the conditions necessary to sustain international economic competitiveness; and international peace and security. The final security issue, the integrity of the democratic process, relates in part directly to subversion and the need to maintain paragraph 2(d). The government defined the integrity of the democratic process as "...the functions of those institutions, rights and freedoms fundamental to the well-being of Canada's democratic society."\textsuperscript{48}
CHAPTER IV ENDNOTES


2. Ibid., p. 1.


5. Ibid., Issue No. 31, p. 31:26.


8. Ibid., p. 32:7.


10. Ibid., p. 15:21.

11. Ibid., Issue No. 29, p. 29:23.

12. Ibid., p. 29:14.

13. Ibid., Issue No. 31, p. 31:26.


15. Ibid., p. 31:25.

16. Ibid., Issue No. 8, p. 8:31.

17. Ibid., p. 8:33.

18. Ibid., p. 8:34.

19. Ibid., Issue No. 28, p. 28:14.

22. Ibid., Issue No. 9, p. 9:20.
25. Ibid., Issue No. 16, p. 16:5.
26. Ibid., p. 16:15.
27. Ibid., p. 16:15.
28. Ibid., p. 16:30.
29. Ibid., Issue No. 18, p. 18:8.
31. Ibid., p. 18:16.
32. Ibid., p. 18:16.
33. Ibid., p. 18:17.
34. Ibid., p. 18:22.
36. Ibid., p. 246.
38. Ibid., p. 24.
42. Ibid., Issue No. 15, p. 15:21.
43. Ibid., Issue No. 32, p. 32:18.
45. Ibid., p. 41.
46. Ibid., p. 40.
47. Ibid., p. 2.
48. Ibid., p. 12.
CONCLUSION

The debate surrounding paragraph 2(d) of the CSIS Act began with the conclusions put forward by SIRC in its 1986-1987 Annual Report, specifically its recommendation to disband the counter-subversion branch and re-allocate its files to CSIS's counter-intelligence and counter-terrorist units. This called into question whether or not the activities described in paragraph 2(d) actually represented a threat to national security. SIRC found that the danger posed by subversive groups or individuals in Canada was low. It concluded that the majority of the activities related to paragraph 2(d) could be captured by paragraphs 2(b) and 2(c) since most of the investigations concerned activities related to either foreign influenced activities or politically motivated violence. In its final written submission to the Special Parliamentary Review Committee, SIRC based its decision to call for the repeal of paragraph 2(d) on these arguments, as well as the fact that since 1988 no new files had been approved by the Solicitor General.

Prior to analyzing and discussing the validity of the findings and issues raised by SIRC and the Parliamentary Review Committee, it is necessary to assert that paragraph 2(d) of the CSIS Act does embody and capture the main tenets of subversion.
There are certain essential elements or activities which are necessary in order to define subversion as a national security threat. These include the fact that it must represent a threat against a political system of government inside a particular state. It also has to be perpetrated by domestic forces within the state which may or may not, knowingly or unknowingly, be influenced by external forces. The key is that subversion represents an internal, domestic threat which works towards achieving its unique objective from inside the existing political, cultural and economic infrastructure of the state. Subversion also attempts to overthrow, undermine or destroy a political system, incrementally, purposely and covertly. In advanced stages subversion may manifest itself overtly through extreme acts of violence, but in its early development, violence or unlawful activity may be absent, incidental or moderate. Subversion, by its very nature is intended to be planned, controlled and carefully orchestrated to ensure the attainment of its ultimate objective.

While the activities described in paragraph 2(d) are consistent with subversion, they represent a restricted or narrowly defined definition. For example, as demonstrated by the definitions of subversion provided in Chapter I, and as explained by Robert Kaplan during his testimony before the 1983 Senate Hearings, subversion does not necessarily have to
include violence. One of the recommendations which came out of the Senate Hearings was the decision to include the term "by violence" in paragraph 2(d) in order to provide clarity between legitimate political dissent and subversion.

Paragraph 2(d) has also been shown to be consistent with the national security mandates of other western states. Canada, however, did not derive its definitions of national security solely from efforts undertaken by other countries. Canada began part of the process of determining and defining national security threats in 1968 with the MacKenzie Commission, and again in 1977 with the McDonald Commission. In both these inquiries subversion was classified and treated as an independent and unique domestic threat. It was also the intention of the government and the Senate Hearings to include subversive activities, as described in paragraph 2(d) as a separate threat definition in the CSIS Act.

A very important point enunciated by the McDonald Commission's Report and essential to the arguments of this paper was the fact that the four definitions of threats to the security of Canada were intended to work in conjunction and not in isolation. The Commission argued that the definitions had to be dynamic, flexible, and capable of overlap, but not to the extent that they could replace one another. As a collective, they were designed to provide protection against the full gambit of threats to national security. This system
allows for the investigation of espionage or foreign influenced activities which support the commission of acts of violence against persons or property or work toward the destruction of the constitutionally established system of government. The removal of any one definition would therefore create a security or intelligence gap and leave Canada, no matter how low level the particular threat, potentially vulnerable.

This point can be further substantiated by analyzing the degree to which paragraphs 2(b) and 2(c) as defined, would actually be incapable of providing essential intelligence on the activities described in paragraph 2(d). This analysis is important because, as noted, it formed one of the cornerstones upon which SIRC and the Five Year Parliamentary Review Committee justified its decision to recommend the repeal of paragraph 2(d).

Paragraph 2(b) deals specifically with foreign influenced activities which are detrimental to the interests of Canada. This definition could partially capture subversive activities only if the domestic organization was foreign controlled or influenced. However, if paragraph 2(d) were to be eliminated the Act would have to be amended to include threats to the constitutional system of government as one of the interests detrimental to Canada. Under paragraph 2(b) CSIS would also be precluded from investigating, through open information or
otherwise, subversive groups in Canada which were not being influenced from abroad. Using paragraph 2(b) alone CSIS would be unable to advise the government on the activities of purely domestic or emerging internal threats.

Section 2(b) refers to foreign influenced activities which are clandestine or deceptive in nature, but it does not include unlawful acts which are a component part of subversion. This definition also places very specific limits on the type of violence which can be investigated. Foreign influenced activity can only be investigated if it involves a threat to any person. This presents too narrow a focus for a security and intelligence organization to sufficiently investigate violent activities associated with subversion. Violence directed at overthrowing or destroying the constitutionally established system of government would encompass more than foreign influenced threats against individuals. It would also be very difficult, if not impossible, if paragraph 2(d) were repealed, for CSIS to demonstrate reasonable grounds to suspect that a foreign influenced threat was being made against an individual for the purpose of overthrowing the system of government. If an organization in Canada ever became influenced to the extent that it began threatening violence against persons, it would be beneficial to have a security and intelligence service with a mandate capable of investigating such an organization before
it became susceptible to this type of external interference.

Paragraph 2(b) is incapable of capturing the activities or the national security threat as described by paragraph 2(d). It does not allow for the investigation of strictly domestic organizations and it does not include essential elements related to a legitimate subversive threat.

SIRC argued as well that paragraph 2(d) activities could be covered adequately by paragraph 2(c), the terrorist definition. This particular debate also surfaced during the 1983 Senate Hearings, but it did not result in the same conclusion as that reached by SIRC. During the testimony of Andre Belanger, Vice-President of Montreal-Ville Marie Region of the Parte Quebecois, Senator Pitfield commented that paragraph 2(d) of Bill C-157 should include the term violence in order to bring it more in line with the McDonald Commission's definitions. Belanger in turn, remarked:

if you use the word violence in 2(d) it comes down to the same thing in the end as in subclause (c), because subclause (c) speaks of political violence. What the McDonald Commission wanted to do with subclause (d) was not to provide for violent acts, it was to try and have a kind of monitoring, a knowledge at large, to use the English expression, of those who might or who were preaching revolutionary ideas, that is people like the communist or Marxist parties, for example, who seek the overthrow of democracy. When you come right down to it, that's essentially the idea of subclause (d). Violence as such is provided for in subclause (c).¹

Pitfield's response captured the essential and fundamental
difference between paragraph 2(c) and 2(d) with respect to subversion. He stated, "No, not completely sir, because it's violence against people and property, [in 2(c)], not against institutions." The institutions he was referring to were those of democracy and the constitutionally established system of government in Canada.

Paragraph 2(c) is incapable of adequately covering the subversive threat because its primary mandate refers to the investigation of acts of serious violence against persons or property for the purpose of achieving a political objective. It does not specifically mention acts of violence directed towards the destruction or overthrow of the constitutionally established system of government. Again, the Act would have to be amended in order to include this as a political objective germane to paragraph 2(c).

If CSIS were limited to investigating only acts of serious violence against persons or property if would be unable to advise the government of subversive threats with an associated lower threshold of violence. As noted, paragraph 2(d) is divided into two parts, the first part deals with non-violent activities such as covert unlawful activities directed toward undermining the political system. The second part refers to the destruction or overthrow of that system by violence, but not serious violence.

Terrorism as an act of politically motivated violence is
a different phenomenon than subversion. It is characterized by extreme violence and in many instances the objectives of a terrorist organization are more related to specific causes or issues, such as the freedom of political prisoners, homeland and independence issues, or religious beliefs. Individuals are defined as terrorists because of their decision to achieve a political objective strictly, if not exclusively, through the use of serious violence. This is not the case with subversives who beside having a unique objective also deploy different methodologies. A subversive is therefore distinguishable from a terrorist based partially on targeting criteria and modus operandi. Paragraph 2(c) also does not refer to unlawful acts which have been clearly identified as an operational methodology of subversion. In addition, paragraphs 2(c) and 2(b) do not capture the procedural, temporal or incremental nature of subversion because they are void of any terms such as ultimately intended or undermining.

A national security intelligence gap could be created if a security and intelligence service had to rely on the definitions of paragraphs 2(b) and 2(c) to advise the government in advance of subversive threats against the political system. This is precisely why the McDonald Commission, the SIT Group, and the Senate Hearings included the activities as described by paragraph 2(d) as a separate national security definition. It was understood and
recognized that subversion, even when narrowly interpreted, represented a unique threat.

One of the other primary reasons that SIRC and the Five Year Review Committee recommended the repeal of paragraph 2(d) concerned evidence that no new files had been opened since the counter-subversion branch was disbanded. This may have been due in part to the re-allocation of paragraph 2(d) investigative files to other branches of the Service, and the acceptance of the Independent Advisory Team's recommendation to transfer the responsibility for new 2(d) investigations to an analytical branch, which may have resulted in an organizational inability to effectively discern or initiate cases related to paragraph 2(d).

The majority of the files SIRC reviewed were residual files inherited by CSIS from "D" Operations of the RCMP Security Service. This particular branch dealt with investigations related to the Communist Party of Canada and its affiliation with the KGB and International Department of the former Soviet Union. Since the RCMP Security Service's counter-subversion section focused on the connection between foreign intelligence service operations and domestic organizations in Canada, SIRC obviously concluded that investigations related to paragraph 2(d) could be handled by the counter-intelligence branch of CSIS. This section is responsible for the investigation of activities related to
paragraph 2(a) espionage, and 2(b) foreign influenced activities. With the removal of the counter-subversion branch, the counter-intelligence section would have continued to investigate threats emerging from 2(a) and 2(b), and not concentrated on the domestic aspects related to activities described by paragraph 2(d). The counter-terrorist branch as well would have incorporated any new subversive files into activities related to paragraph 2(c), not 2(d). Therefore, once the responsibility for paragraph 2(d) was removed from the operational side of the Service and placed into an analytical unit there was no branch left specifically designated to investigate domestic or subversive threats. An analytical branch of the Service with no investigative mandate or experience, and limited to the collection of open information would have had a difficult time in formulating the necessary grounds to suspect that paragraph 2(d) activities were occurring. Its task would also have been made more frustrating by the fact that subversive activities which can be covert and unlawful, would not have been readily observable through open sources of information. It is therefore not surprising that in 1990 SIRC found that the Solicitor General had not approved any new investigations strictly related to paragraph 2(d) since 1988.

In 1990 the Special Parliamentary Review Committee also recommended to the government that paragraph 2(d) be deleted
from the CSIS Act primarily based upon the same arguments as those which were put forward by SIRC, namely the fact that no new investigations pertaining to paragraph 2(d) had been approved and the argument that paragraphs 2(b) and 2(c) could adequately protect against a subversive threat. There is no definite information available to prove that the decision of the Committee with respect to paragraph 2(d) had been directly influenced by SIRC. Nonetheless, there are some positive indicators which suggest that a certain degree of indirect influence had transpired.

The Parliamentary Committee did not have access to the operational files of CSIS and therefore it had to rely on testimonies from government and non-government witnesses, and on the findings of those organizations which had access. While SIRC obviously had access there were others such as the Independent Advisory Team which testified in the defence of retaining paragraph 2(d). In fact, Osbaldeston informed the Committee he had been surprised by SIRC's recommendation to repeal the section. He had reviewed the same files and in his opinion a subversive threat in Canada was justifiable.

Evidence suggesting that perhaps the Committee was biased towards SIRC's position surfaced during the testimony of the Canadian Jewish Congress. The Congress offered an excellent overview of the practical applications of subversion as it related to the threat posed by right-wing extremist
organizations. They argued that in order for CSIS to advise the government on threats of this nature, paragraph 2(d) had to remain as an integral part of its mandate. Subversion, they felt, was a complex issue since the political objectives of certain racist groups were not always readily identifiable. Racist groups represent a potentially more dangerous threat given that their ultimate intentions could result in the destruction of the Canadian political system. The Parliamentary Committee, however, never actually debated the issue in any significant way, especially the applicability of maintaining paragraph 2(d) to protect against such threats. John Brewin, who went unchallenged by any of the other members of the Committee, effectively terminated the discussion by pointing out to the Congress that subversive threats as they described could be covered by paragraph 2(c). This was not necessarily accurate since the activities described by the Congress dealt with ultimate intentions, non-violent acts, and threats to the political system. The Committee it seemed had developed a pre-determined stance against paragraph 2(d) which may have been the direct result of SIRC's influence. In another example Maurice Tremblay, the Committee's Vice-Chairman, in a dispassionate retort against paragraph 2(d) reminded a witness that SIRC itself had recommended its deletion. If the Committee had not readily accepted the opinions of SIRC then why were members of SIRC not called to
testify and justify their position and conclusions with respect to paragraph 2(d)?

As noted in Chapter IV, there was an indication that a degree of bias or prejudice against paragraph 2(d) may have also crept into the Committee's decision. This was exemplified by the fact that some members associated paragraph 2(d) with the files and activities of the former RCMP Security Service. They believed paragraph 2(d) was specifically included in the CSIS Act to permit the government to investigate "bad little Quebecers", or separatist elements in Quebec. This may have created a certain fear or anxiety that paragraph 2(d) would result in wrongdoings similar to those committed by the RCMP Security Service during the 1970's. The extent to which this impacted on the findings of the Committee is unknown. However in its final report it did acknowledge that its decision to repeal paragraph 2(d) had not been unanimous.

The Committee's report indicated as well that its decision had been partially based on the fact that there were those who argued paragraph 2(d) should be retained in order to provide for the detection of future threats which might occur. The Committee believed maintaining paragraph 2(d) in the event that possible subversive threats might take place was not justifiable. This opinion suggests that perhaps members of the Committee did not fully understand or appreciate the
fundamental principles of security and intelligence. The primary function and purpose of an intelligence organization, unlike a police agency, is to provide the government with threat assessments concerning ongoing as well as future threats. Just because a threat is low level or non-existent at a given time does not preclude it from being considered valuable intelligence from a governmental perspective. Information to the effect that a threat does not actually exist can be equally beneficial. The Canadian government and the Canadian people may be re-assured to know the extent to which the constitutionally established system of government is threatened. If the Committee applied the same philosophy to threats such as terrorism, in all likelihood, it would have reached a different conclusion. It is difficult to believe it would have supported a recommendation for the repeal of paragraph 2(c) on the basis that no terrorist acts had taken place in Canada for two years.

In its written proposal to the House of Commons Special Review Committee, SIRC pointed out that paragraph 2(d) had been one of the most criticized provisions of the entire CSIS Act. The controversy surrounding paragraph 2(d) however was endemic to a larger, broader interpretation of subversion and not therefore valid for the way subversion was defined in the Act. The fine line between subversion and legitimate political dissent has been a long-standing argument.
As the Parliamentary Committee noted it heard testimony from witnesses who believed paragraph 2(d) would have a "chilling effect on rights and freedoms". They felt that the vagueness of the definition could lead to excessive speculation on the exercise of guaranteed rights and freedoms and hence allow CSIS to place dissenters and lawful advocates under surveillance. Those who put forward such arguments neglected to take into consideration the fact that paragraph 2(d) represented a narrow definition of subversion, which automatically restricted CSIS's ability to investigate those grey areas of subversion. They also tended to look at paragraph 2(d) in isolation from the rest of the Act. The investigation of any of the defined threats is restricted by Section 12, which permits CSIS to conduct investigations only to the extent that it is strictly necessary and only after reasonable grounds to suspect have been established. CSIS is responsible for advising the government and not for actually countering or engaging in any preventive measures. The anti-paragraph 2(d) lobby, as well as the Committee did not take into consideration the proviso in the Act which excludes CSIS from investigating lawful advocacy, protest or dissent.

The desire to protect democratic rights and freedoms is of paramount importance. However, criticizing or protesting a particular security issue without offering practical alternatives or suggestions serves no interest. The CSIS Act
itself limits the investigational scope of paragraph 2(d). The government implemented the recommendations of the Independent Advisory Team, the counter-subversion branch was disbanded, monitoring of paragraph 2(d) activities has been restricted to open information and ministerial approval is required for the use of more intrusive investigative techniques. Even those who called for the repeal of paragraph 2(d) acknowledged that a subversive, although low-level, threat still existed. There are no guarantees however that the threat will remain low or that an extreme right wing, racist subversive threat will not be a future possibility. If CSIS is restricted any further from investigating such threats there is a very real possibility that the government would not be adequately informed.

Following the 1988 conference on Advocacy, Protest and Dissent which was held at the Donald Gordon Centre at Queen's University, C.E.S. Franks edited a book comprised of selected papers which had been presented, entitled Dissent and the State. In his introductory comments Franks states that western liberal democracies have institutionalized opposition and dissent within the electoral process and representative bodies. However, he argues that even within liberal democracies the activities of security organizations can harm democracy by preventing legitimate dissent or sanctioning certain individuals or groups involved in the existing
political process. When the state uses its security service to prevent or deter dissent, greater problems and stress within the system will arise because the problems become submerged and ignored. The challenge, according to Franks, for any regime is to ensure that dissent is not suppressed but openly expressed and allowed to work toward improving human rights and the political system as a whole. Those states that can accomplish this are more secure than those that deploy security organizations to control and prevent dissent. Franks recognizes however that unlike the experience of some Latin American and former East European countries, western liberal democracies "have made a wide range of dissent and change legitimate and legal through democratic electoral policies."³

Franks also discusses the issue of the problem of dissent and the extent to which control by the state is viable. Schools of social science, he points out, "argue that conflict is endemic in human society, and that the state will always have to regulate the struggle between interests and groups with competing views of the good life and the role of the state. And as part of the state's regulatory activities it will always have to control and discipline groups whose activities threaten stability and even the state's survival. Hence the issue of distinguishing between acceptable and unacceptable dissent can never disappear; the boundary between them can be readjusted, but the problem will remain".⁴ While
there are those who are opposed to and critical of Canada's state security system, Franks believes that there are subversive activities that ought to be the target of CSIS's attention. "The state has legitimate concerns for survival and peaceful change, and a serious risk to democracy comes from radical minorities of left or right who are frequently audacious, violent, and ready to speak for the nation without consulting it."5

The Ministry of the Solicitor General of Canada's response to the Special Parliamentary Committee and indirectly to SIRC concerning their call for the repeal of paragraph 2(d) was brief and to a certain extent somewhat lacking. While the government did not adequately address the issue of paragraph 2(d) it did incorporate it into a general argument against amending CSIS's primary mandate. The Ministry adopted the position that a great deal of historical effort had gone into the formulation of both the threats covered by the Act and the actual wording. It argued that the subversion debate would probably remain without any consensus because it dealt with such fundamental and philosophical questions. History, it stated, "suggests amending the CSIS Act in this area would not be a very productive exercise."6

The government's decision to provide only limited comment on the paragraph 2(d) issue and the valid arguments raised by SIRC, the Parliamentary Committee and many concerned and
interested organizations and individuals is unfortunate, because it still leaves a shadow over subversion and how it is investigated as a national security threat. The Ministry could have put forward arguments such as those in this thesis which are based on an analysis of the intention and wording of the threat definitions.

In 1990 the government did re-affirm its commitment to remain informed about possible subversive threats by including as one of the five national requirements it set as priorities for CSIS; the integrity of Canada’s democratic process. This was further defined as the functioning of those institutions, rights and freedoms, fundamental to the well being of Canada’s democratic society. These ideals and principles as a collective embody what the CSIS Act describes as the constitutionally established system of government in Canada. If these ideals are subversively challenged or curtailed in any way, it would clearly represent a real domestic or internal threat. Democracy on its own as an ideal offers no internal self-protective mechanism. It requires an external vigilance and in Canada part of that process includes CSIS and its ability to advise the Canadian people about threats to their system of government.


4. Ibid., p. 19.

5. Ibid., p. 19.

BIBLIOGRAPHY


Canadian Broadcasting Corporation, "Dissent and Subversion" Ideas, CBC Transcripts, September 5-26, Toronto, 1983.


