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COMMISSION OF INQUIRY
INTO COMPLAINTS MADE BY
GEORGE VICTOR SPENCER

REPORT
OF
THE COMMISSIONER
THE HONOURABLE
MR. JUSTICE DALTON COURTWRIGHT WELLS
SUPREME COURT OF ONTARIO

JULY 1966

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REPORT
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JULY 1966

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:
MAY IT PLEASE YOUR EXCELLENCY,

As the Commissioner appointed by Order in
Council dated 7th March, 1966, P.C. 1966-395, to inquire
into and report upon the complaints made by George
Victor Spencer and related matters,

I BEG TO SUBMIT FOR YOUR EXCELLENCY'S
CONSIDERATION THIS REPORT.

July 18, 1966.



COMMISSIONER

SUMMARY OF REPORT

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Mr. George Victor Spencer was a postal clerk employed in the Post Office at Vancouver, British Columbia. He had occupied that post since July of 1949 and he was dismissed from it for misconduct, which arose from his giving of information affecting the security of Canada, to the agents of a foreign power.

On the 7th March, 1966 I was appointed a Commissioner under Part 1 of the Inquiries Act to investigate complaints made by Spencer, as set out in a telegram to the Right Honourable the Prime Minister of Canada. It was indicated in that telegram that Spencer did not feel that he had been fairly dealt with. His chief complaint was with the nature of his dismissal and what he regarded as the unfair deprivation of benefits associated with his work, such as insurance and pension benefits.

I was asked to report whether in my opinion Mr. Spencer had been dealt with fairly and if not, what rectification appeared to be fair. The procedure to be followed was left to my discretion, including the power to hold sessions in camera. I was afforded the assistance of Mr. John J. Robinette, Q.C., of Toronto as Counsel.

On the 9th April, 1966 Mr. Spencer was found dead in the kitchen of his home. He had evidently been so since late on the preceding Wednesday or Thursday, the 7th April. After an inquest a Coroner's jury found that he had come to his death as the result of a pulmonary thrombosis secondary

to the resection of the left lung. His death was certified by them as natural. May I say that there was no evidence before me of any sort which would contradict this conclusion. Mr. Spencer had his left lung removed because of a cancerous condition which had spread into the other lung. He was given radiation treatment, but the advice received by the authorities, at its most pessimistic view was that he might not live more than two to three months. If the cobalt therapy was successful he might live up to five years. He was apparently under an immediate and continuing danger that brain paralysis could occur at any time.

At the beginning of my inquiry I held an in-camera session at Ottawa in which I heard the evidence of Assistant Commissioner Kelly of the Royal Canadian Mounted Police, who is in charge of the Security and Intelligence Directorate of that service; Sergeant Low, who took a long statement from Spencer, and the statement itself which was filed and the evidence of the various officers who had actually carried on the investigation of Spencer's activities in and near Ottawa, when he met various officials of the Russian Embassy. Subsequently all of this evidence which could safely be made public, with regard to the security of Canada as a guiding factor, was made public at the opening of the subsequent hearing which I held in Vancouver on the 5th May. Mr. Rankin, Spencer's Counsel, had had this transcript previously for a week or ten days.

It is quite clear from Spencer's admissions made to Sergeant Low and Constable Dane, that he had, on at least

seven occasions, gone down to Ottawa at the expense of the Russian Embassy and had given information which officers of that Embassy had asked him to obtain about conditions in British Columbia.

A great deal of Assistant Commissioner Kelly's evidence was his opinion as an expert in intelligence work as to the meaning and consequences of the requests made to Spencer by the Russian agents, for the most part one LEV BURDIUKOV. These meetings of Spencer's were on or about the 8th October, 1960, which was the first one, March 4th, 1961, August 5th, 1961, January 6th, 1962, June 2nd, 1962, September 22nd, 1962 and a final meeting on February 16th, 1963.

Mr. Spencer was of English birth and had been brought to Canada in his childhood. His formal education terminated after two years High School when he started working as a garage mechanic. To his credit when the last war broke out he tried to enlist in various units and was finally accepted by the Army Service Corps in the year 1942. In the course of his service he was working on tanks and made some very valuable suggestions with regard to improvement in their operation. These suggestions were tested and adopted and in the result he received the recognition of the British Empire Medal.

He returned to Canada in 1945 after his father's death. He was at first unemployed but finally obtained Christmas work in the Post Office at Vancouver. This later developed into part-time work and he was taken on the permanent staff in July, 1949.

Some time in the year 1936 or 1937 he became a member of the Canadian Communist Party of that day. Because of arguments with his fellow members he was apparently expelled in 1946, at which time the party was known as the Labour Progressive Party. Despite repeated efforts up to the time of his death, the Communist Party of Canada would not reinstate him. He was also a member of the Canadian Soviet Friendship Society and, as such a member, was invited out to see Russian freighters in the year 1956, which had come to Vancouver to pick up cargoes of wheat. Members of the Canadian Soviet Friendship Society were apparently invited as a courtesy to visit the ships. He went on these visits, in the course of which he met the then Commercial Attaché of the Russian Embassy, one by the name of AFANASIEV. He expressed to this gentleman his great desire to take a trip to the Soviet Union and to see what they had done for himself. Later he was asked to meet someone at the corner of Main and Broadway in the City of Vancouver, who was apparently a member of the Russian Embassy staff. Spencer puts this as two years after his meeting with Afanasiev, but it must have been from the time of the meetings in the year 1960.

He went to Ottawa under his mother's name of McNeil and on this trip he was asked to get as much information on ethnic groups as he could, who the various members were, whether they operated their own schools and general information about British Columbia. At this meeting a future date was made and a system was worked out of signals. As Spencer

said, they always met on a Saturday at 7:00 o'clock p.m. In letters he received he was told there would be a film available to show on a named date. If a date was acceptable, he would reply that he could show a film on that date and a meeting then took place. As Spencer said, he used these signals throughout his dealings with the agents of the Embassy. Burdiukov was the person he saw most frequently. As he said, he acquiesced in what he was asked to do because he felt there was a chance of getting a trip to Russia and that the Russian Embassy had quite a bit of influence in persuading such groups as unions, etc., as to who should be able to visit Russia. As he remarked in his statement, "it was therefore to my advantage to get a trip to keep on the good side of the Embassy Officials."

On his appointment to a position in the Post Office Spencer took two oaths, one an oath of allegiance to the King and an oath of office and secrecy which included these words "that I will not without due authority in that behalf, disclose or make known any matter or thing which comes to my knowledge by reason of such employment". Notwithstanding this Spencer chose to reveal to Burdiukov all he apparently knew about security arrangements in the Vancouver Post Office. I deal with this in some detail later in the report, but the effect of the information furnished was that the agents of the Soviet Embassy would be reasonably safe in using the mails for communication with Spencer and any other agents in British Columbia. He went into the Post Office arrangements in very great detail.

He also gave Burdiukov some information about farms for sale in southern British Columbia. He admitted this in a preliminary conversation with Sergeant Low and I am satisfied that Spencer went to a great deal of trouble to obtain information on farms that were for sale in British Columbia and passed it on to the Russians.

Spencer apparently also received instructions in the operation of "dead letter" and "live letter" boxes. He was asked to increase the amount of mail coming to his home by writing more letters to relatives. He handed over his British Columbia driving licence, supplied information in respect of motels, auto courts and available tourist accommodation. He obtained information in respect of ethnic groups in Vancouver and included in this was information about Russians, Ukrainians, Germans, and Chinese. He took pictures of Vancouver and furnished them with a great many photographs of Vancouver. He obtained maps of southern British Columbia and Vancouver which set out a great deal of special information, including such information as the Vancouver water works and its distribution in the city. These he handed to Burdiukov. He also obtained the names of slaughter houses and apartment houses that were no longer in existence and he was asked to supply biographic data from headstones in grave yards and the names, and the names of reliable ex-Communist Party members.

Assistant Commissioner Kelly pointed out in his evidence that this type of information was of great assistance to a foreign intelligence service in enabling them to supply legends for illegal agents. I have set out the evidence on this point. Spencer also obtained information about schools that had been torn down or destroyed, about clothing and local customs. I quote a short passage from Assistant Commissioner Kelly's evidence as follows:-

"A. A legend is a false history, including false documentation, and the significance of obtaining information concerning defunct businesses, schools that had been destroyed, businesses that had been destroyed, so that the individual concerned, with a legend and being an illegal, would be able to receive documentation which could not be checked because the business in which he worked, if he were a slaughter-house employee and the slaughter-house that he was supposed to have been employed in had been destroyed, there was no possibility of going back or little possibility of going back and checking there to ensure that he was or was not the person his documentation showed him to be."

He pointed out that this is illustrated by the case of the famous Russian spy Lonsdale who had a Canadian passport and whose documentation arose out of the Haileybury area in Ontario where there was a disastrous forest fire in the early 20's and most of the records had been burnt.

In the result it is to be observed that a great deal of the evidence given by Assistant Commissioner Kelly, which well merits reading in full, was not based on hearsay, in the sense that he was commenting on reports furnished him by officers in his branch, but was based on Mr. Spencer's admissions in his written statement given to Sergeant Low and

Constable Dane. In certain particulars this was reinforced by reports of investigating officers, but all of the essential material as to what took place is fully stated by Mr. Spencer himself. While much of this information appears to be of an apparently innocent nature, when the various requests which he tried to fulfill are put together they assume a different aspect.

I base this opinion particularly on the evidence of Assistant Commissioner Kelly. Based on his experience in intelligence work I found his evidence most illuminating. I think it might be fairly said that all the information asked for from Spencer laid the foundation for the establishment of an intelligence "net" in British Columbia. In respect of farms, as Assistant Commissioner Kelly indicated, that request was a very significant one and in his opinion, related to the acquisition of suitable property for the establishment of a Russian Intelligence Service illegal network. The location of the farms, close as they were to the United States border, suggested that the illegal residence, as it would be known, would be operating espionage agents on the West Coast, possibly both in Canada and the United States. Indeed many of the Russian requests of Spencer could be used for documenting a foreign person for espionage purposes anywhere in the world.

Another task which Spencer mentioned was put to him, was the obtaining of information about ethnic groups or associations in Canada and particularly Russian ethnic groups,

which included the Ukrainians. Assistant Commissioner Kelly said the object of the intelligence service in this particular sphere was that one of their primary responsibilities is to penetrate these groups and to collect information concerning emigré organizations. If these organizations are hostile to the Soviet Union there is a responsibility on the foreign intelligence service of neutralizing this anti-Soviet activity, possibly by means of disruptive tactics inside the organization. There also takes place in these organizations what Assistant Commissioner Kelly called "character assassinations".

Another point of interest is that any foreign intelligence service operating in Canada has the responsibility of recruiting emigrés through coercive measures, sometimes by means of threats or reprisals to relatives residing in the home country, and using the pressure thus exerted to use these recruits for intelligence collection purposes.

I have already commented on the information Mr. Spencer gave Burdiukov about farms in southern British Columbia.

Spencer also furnished Burdiukov with a complete description of the Trans-Mountain Pipeline, including a great many photographs of its installations. It is perfectly clear that there is nothing secret about the situation of the Trans-Mountain Pipeline, it could have been obtained by any Canadian, but Spencer was a Canadian

Civil Servant giving information he obtained in a neatly parcelled-up fashion to a known agent of the Russian Government. This information in time of war might prove to be very valuable. Burdiukov is described as a man having a heavy Russian accent. He undoubtedly would have been an object of suspicion had he tried to collect all the information he got from Spencer, himself.

In the report I also commented on Mr. Spencer's interview with Mr. Jack Webster of Vancouver, which was shown on the C.B.C. television programme "This Hour has Seven Days". I have had the advantage of reading the entire transcript, which was produced in British Columbia, in full. What was shown on "This Hour has Seven Days" really simply gave the highlights of the interview, but the total effect was one that led to an impression of guilt on Spencer's part, or at least a very skilfull evasion of stating what the true facts were. In all this interview he was quite complimentary to the Royal Canadian Mounted Police, who had apparently rendered him very considerable assistance in his rather feeble condition resulting from his operation. There was no evidence however to suggest that in the years 1960 or 1963, when he was supplying Burdiukov with the information that he obtained for him, that he was a sick man at that time, or one who did not know what he was doing. He apparently had doubts about the whole matter after his third interview, but he made four more trips to Ottawa. For

these, he said, only his actual expenses were reimbursed to him. The evidence on this is somewhat in conflict and the truth probably is that he received somewhere between \$3,200.00 and \$6,800.00. He probably got his actual expenses plus a reasonable allowance for support while he was absent from home.

One's sympathies are aroused by the pitiful condition in which Spencer's life came to an end. But at the time when most of these events occurred Spencer was a Civil Servant in good health. He was an official of the Postal Workers Association and apparently a good one. There is nothing to indicate that he did not know what he was doing, and the fact that he was obsessed with the desire to get someone to send him on a trip through the Soviet Union does not, in my opinion, excuse him.

Civil Servants are in a somewhat special position. They are servants of the Queen's Government in Canada, they are paid by the citizens of Canada and they have, perhaps more than ordinary citizens, an obligation to have a sense of responsibility and of loyalty to Canada. Faithfulness is a quality that can reasonably be demanded of them at all times, as well as faithfulness to their Oath of Allegiance and to their Oath of Secrecy.

The Shorter Catechism of the Church of Scotland starts off with a very pertinent question, and that is "What is the chief end of man?" and the answer is "Man's chief end is to glorify God and to enjoy him forever."

If such a man is a Civil Servant in Canada, the second end of his life is complete loyalty and faithfulness to Canada.

The giving of information to assist the known agent of any foreign power without proper authority to give such information is misconduct of a gross kind. It does not at all add to or detract from Spencer's culpability that in this case the information was furnished to an agent of the Government of Russia, or as it is more properly called, the Union of Soviet Socialist Republics. It would have been equally reprehensible in my opinion had it been given to the agent of any foreign power whatever, unless there was due authority given such Civil Servant by the proper government authorities to transmit such information. It is a very naive view of the situation as Mr. Rankin argued at the close of the hearing in Vancouver to say that on the evidence shown, that the information handed out by Spencer was not secret or classified information, and was harmless, and that he could not be guilty of misconduct unless in the giving of information he was guilty of an offence under the law; that is, as I conceive it, the law relating to Treason or offences under the Official Secrets Act.

Quite frankly I would have the greatest doubts myself whether Spencer could have been successfully prosecuted for these offences. What he did however was very close to the line, and quite a strong argument could have been

made against him... But quite frankly, and for what it may be worth, I would express the personal opinion that it would be straining the language of Section 46 of the Criminal Code, Sub-Section (e) or of the Official Secrets Act to initiate a prosecution under those Statutes. That does not mean that Spencer was not guilty of the grossest misconduct in his office. A Civil Servant does not have to commit a crime to merit dismissal. There are lesser forms of misconduct, sometimes quite serious ones. In my opinion he was guilty of such gross misconduct that the government of this country would have been culpable if they had not discharged him from his duties.

At the time this matter was being considered the information they had was, as I have noted earlier, that he might be dead within two to three months; that if the cobalt therapy had actually arrested the growth of the cancer he had one in ten chances of living up to five years and he was in danger of brain paralysis at any time.

To prosecute a man in this condition would have been almost indecent and in my opinion Spencer was treated by the Government of Canada with forbearance and fairness.

I was also asked by the Order in Council and the Commission, whether in my opinion, Mr. Spencer had been dealt with fairly, and if not, what rectification appeared to me to be fair. I think that I have indicated that in my opinion he was treated fairly. Had he still been alive and in want,

in view of his physical condition and his long service, some consideration might have been given as a pure matter of compassion and grace and in view of his somewhat distinguished war service, to give him some assistance in place of the pension which he had lost. Certainly in my opinion, there would be no obligation on the government to do so. He did, however, receive under the Statute, quite fairly all that he was entitled to by way of return of his own contributions to the pension fund. It may be of interest to know what Mr. Spencer's rights were in respect of retiring allowances if he had been allowed to retire on any grounds other than the misconduct for which he was dismissed, and I have obtained through the courtesy of the Civil Service Commission a description of these benefits and I annex them as Appendix 1 to the report. However, it is not necessary to evoke any further compassion for Mr. Spencer because he is no longer in this world.

One other aspect of his treatment was his so-called "surveillance" by the Royal Canadian Mounted Police. One thing is perfectly clear that from the time that Spencer revealed his identity to a very eminent reporter of the Vancouver Sun and the fact who he was was published, he was, and I cannot find a better word, hounded perpetually by members of the press at all hours of the day and night, without any consideration for his personal well-being whatever. It is quite true that he brought this on himself,

but in the early stages of it it was undoubtedly a serious detriment to his recovery. The Mounted Police kept in touch with him and indeed became for him persons to whom he could go in his troubles and from whom he could get assistance, and he got such assistance. As he expressed in his interview with Mr. Webster he was in some fear of attack by citizens who were more conscious of their loyalty to this country than he was, and he was, of course, in no physical condition to defend himself with any reasonable hope of success.

He was treated with great kindness and consideration by the Royal Canadian Mounted Police, and on one or two occasions was rescued from great pressure. Better places where he could stay with some proper care were found for him through their good offices. He had not been charged with any offence, and they in fact had no right to watch and beset him if he objected to it, but in point of fact his getting in touch with them was, for him, not a watching and besetting, but a refuge in time of trouble, and by their acts they proved to be friends to a poor broken-down sick man, of much greater value and worth than apparently any of his relations or other friends were. In consequence of this, and without any knowledge on their part, some time in January of this year he brought a letter to the Mounted Police office in Vancouver which begins "To whom it may concern". This letter has been filed as Exhibit No. 28

and I think in fairness to the Royal Canadian Mounted Police it should be published and I attach it as Appendix 2 of the report. It was quite unsolicited, and is, I think, evidence of the fairness with which those in authority and those acting under them treated Spencer in his very great difficulties. Spencer, as Sergeant Low said, was a complex character. To understand his very mixed motives and his lack of appreciation of his duty and obligation to Canada may explain his actions, but it does not condone them.

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By terms of reference approved by your Excellency in Council on the 7th day of March, 1966, I was appointed a Commissioner under Part I of the Inquiries Act, to make such investigation as I in my discretion deemed necessary, into the complaints made by one George Victor Spencer, as set out in a telegram to the Right Honourable the Prime Minister of Canada.

It may be appropriate if I set out the terms of the Order in Council, commencing with the telegram, to which I have just referred:

"I HAVE HAD A LONG INTERVIEW WITH VICTOR SPENCER WITH THE APPROVAL OF HIS SOLICITOR, HARRY RANKIN STOP SPENCER WANTS AN INQUIRY OF HIS CASE, EITHER A JUDICIAL INQUIRY OR BY PARLIAMENTARY COMMITTEE BECAUSE HE DOES NOT FEEL HE HAS BEEN FAIRLY DEALT WITH STOP HIS COMPLAINT IS WITH THE NATURE OF HIS DISMISSAL AND THE UNFAIR DEPRIVATION OF BENEFITS ASSOCIATED WITH HIS JOB SUCH AS PENSION AND INSURANCE BENEFITS STOP HE HAS NO COMPLAINT WITH THE TREATMENT HE HAS RECEIVED FROM THE RCMP BUT ON THE CONTRARY FEELS THEY HAVE BEEN MOST CONSIDERATE WITH HIM STOP MR HARRY RANKIN HAS ALSO AUTHORIZED THE SENDING OF THIS TELEGRAM."

and to report whether, in his opinion, Mr. Spencer has been dealt with fairly and, if not, what rectification appears to him to be fair;

- (2) that the procedure to be followed be in the absolute discretion of the Commissioner, including the power to hold the sessions in camera and to adopt such procedures as the Commissioner considers appropriate for the protection of the security of Canada;

- (3) that the Commissioner be authorized to exercise all the powers conferred upon him by Section 11 of the Inquiries Act;
- (4) that the Commissioner be authorized to sit at such times, and at such places as he may decide from time to time;
- (5) that the Commissioner be authorized to engage the services of such counsel, staff or technical advisers as he may require at rates of remuneration and reimbursement approved by the Treasury Board; and
- (6) that the Commissioner report to the Governor in Council with all reasonable despatch."

Subsequently I was afforded the assistance of counsel in the person of Mr. John J. Robinette, Q.C., of the City of Toronto.

Subsequently on the 17th day of March 1966 a Commission in the terms of the Order in Council, to which I have just referred, was issued to me under the Great Seal of Canada.

Unfortunately on the 9th day of April 1966 Mr. Spencer was found dead in the kitchen of his house, and he was certified dead at the Vancouver General Hospital on April 9th, 1966. There was evidence before the Inquest that he had been seen alive on the preceding Wednesday (6th April, 1966), and it would probably appear that he died very late Wednesday or early Thursday morning (7th April 1966). The finding of the Jury was that he had come

to his death as a result of pulmonary thrombosis secondary to resection of the left lung. They certified his death as "natural".

Indeed, the Royal Canadian Mounted Police received many reports as to Mr. Spencer's condition. This was through their staff in Vancouver, and on the 11th May 1965, the opinion of Dr. Coy, Mr. Spencer's surgeon, was summarized in a Telex message to RCMP headquarters:

"EARLY TODAY, SPENCER'S PROGNOSIS OBTAINED FROM DR. COY AFTER COY HAD OBTAINED SPENCER'S SIGNATURE AUTHORIZING RELEASE OF INFORMATION TO RCMP. DIAGNOSIS IS SUSPECTED MALIGNANCY IN STUMP OF REMOVED LUNG AND BRONCHIAL TRUNK LEADING TO REMAINING ONE. BECAUSE OF RAPID GROWTH OF PREVIOUS TUMOR DOCTOR'S MOST PESSIMISTIC VIEW IS DEATH WITHIN 2 TO 3 MONTHS WHEN SUSPECTED MALIGNANCY COULD REACH REMAINING LUNG. MOST OPTIMISTIC VIEW IF COBALT THERAPY PROVES TO BE ARRESTING IS ONE IN TEN CHANCES OF LIVING UP TO 5 YEARS. THERE IS ALSO THE DANGER IN LUNG CASES THAT BRAIN PARALYSIS COULD OCCUR AT ANY TIME. DOCTOR ASSURED THAT OUR INTERVIEWS TO DATE AND FUTURE INTERROGATIONS WOULD HAVE NO EFFECT ON SPENCER'S PROGRESS. IN FACT DOCTOR SUGGESTED HE WILL ARRANGE SPENCER'S TREATMENTS FOR MORNINGS TO LEAVE AFTERNOONS FREE FOR OUR NEEDS."

In view of Mr. Spencer's death I decided to hold a hearing in camera in Ottawa in order to ascertain what were the circumstances which had led to his dismissal as a mail clerk, sorting mail on the city floor of the Vancouver Post

Office, from the Civil Service. Mr. Spencer had been a member of the Civil Service since 1949 and as I understood the situation, he was dismissed for misconduct arising from his giving of information, affecting the security of Canada, to the agents of a foreign power. In view of the rather delicate problem of security and the nature of counter-espionage measures undertaken by the Security and Intelligence Branch of the Royal Canadian Mounted Police I decided that the hearing in Ottawa should initially be heard in camera, in the presence of myself, the necessary police witnesses and my counsel, Mr. Robinette, who examined and on occasion cross-examined the various witnesses.

In reaching this conclusion I had to consider what evidence should be taken in camera. I decided that there were areas that I wished to investigate which, if made public, would adversely affect the work and security in the area of the counter-espionage responsibilities of the Security and Intelligence Branch of the Royal Canadian Mounted Police. I had to consider that any public revelation of the methods of work in the security service in making some of the investigations they did with respect to Mr. Spencer, would reveal to the experts within any foreign intelligence service operating in Canada, operational methods which it was necessary to protect in the interests of Canada's security and safety.

If these matters were allowed publicity it could only assist the efforts of those conducting espionage against Canada and in this way create a greater danger to the State. It became apparent to me that certain rules must be adhered to if the security service is to properly meet its responsibilities in matters within this area.

Wherever possible I have tried to have the evidence heard in public. This evidence has been largely evidence of first instance, apart from the summary given to me by Assistant Commissioner Kelly, of his officers' reports and also his opinion of the effect of Mr. Spencer's admissions. The smaller part of it is confined to what might be called hearsay and the greater part is his expert testimony on the inference which from his experience might be drawn from the tasks allotted to Spencer and the material he admittedly furnished Burdiukov.

As I have already stated I had the officers on whose report this summation rested, closely examined before me by Counsel, and I have not held anything against Mr. Spencer as a result of this information about which I did not feel there was ample corroboration. If the matter were open to any particular doubt or question I have ignored it.


In respect of the evidence which in my opinion could be made public, I had included in the public record that evidence of Assistant Commissioner Kelly based on the material I have referred to above. It also included the very long

statement which Sergeant Low and Constable Dane took from Mr. Spencer in their investigation in Vancouver in May last year. As I have already pointed out Assistant Commissioner Kelly's evidence dealt not only with reports he had received but a large part of it dealt with his interpretation of the acts which Mr. Spencer admitted committing, and of the information he transmitted to various Russian agents. This testimony was in effect expert evidence given by Mr. Kelly as to the inference to be drawn from Mr. Spencer's statement to Sergeant Low and Constable Dane. I did not make this transcript available to the public immediately until I had forwarded a copy of it to Mr. Harry Rankin of Vancouver, who was the member of the British Columbia Bar acting for Mr. Spencer at the time of his death, and who advised me when I sat in Vancouver that he was Mr. Spencer's Executor. He had something over a week to consider it. At the same time I suggested that we should try to hold sittings in Vancouver at the beginning of May.

Unfortunately owing to an attack of influenza I was not able to go to Vancouver until Wednesday, the 4th day of May and the first public sitting was heard there on the morning of the 5th.

At the opening of the hearing Mr. Rankin took strong exception to including in the evidence the evidence of Assistant Commissioner Kelly. He said it was hearsay. In

that respect I differ with him. I had advised him that while he might cross-examine Mr. Kelly, he could not cross-examine him as to the methods used in obtaining the evidence. No mention was made by Mr. Rankin of Mr. Spencer's admissions and Assistant Commissioner Kelly's interpretation of them. Apart from what has been stated above, another purpose of Assistant Commissioner Kelly's evidence was to gather together in one place all the allegations of misconduct on the part of Mr. Spencer which led to his dismissal from the Civil Service. As far as I am aware this had not previously been done publicly.

 As I have stated Mr. Rankin took objection to the inclusion of Assistant Commissioner Kelly's evidence. He took the position that I could only hear evidence against Mr. Spencer on the same basis as I would on a trial under the Criminal Code. In my view of the law this is not a valid view. The matter is most compendiously dealt with by the Judicial Committee of the Privy Council in the case of University of Ceylon v. Fernando (1960) 1 All. E.R. at page 631. That case concerned the suspension of a university student for an indefinite period for the offence of cheating at examinations and from the course taken by the Board of Residence and Discipline of the University acting on a report from the Vice-Chancellor of that institution, chiefly on the ground that the proceeding had violated the principles of natural justice. As Lord Jenkins, who delivered the report of the Committee said:-

"the appeal resolved itself into the question of whether this inquiry was conducted with due regard to the rights accorded by the principles of natural justice to the plaintiff as the person against whom it was directed."

He then continued and in doing so dealt with the classic statement of Lord Loreburn in the case of Board of Education v. Rice (1911) A.C. 179 at page 182. This case arose out of an investigation directed by a Board of Education and at page 182 Lord Loreburn stated:-

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

Proceeding to deal with the present state of the law, Lord Jenkins said at page 637 in the case of the University of Ceylon v. Fernando, directing his attention as I have said to the process of natural justice:-

"These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker, L.J. said in Russell v. Duke of Norfolk (1949) 1 All E.R. 109 at p. 118.

'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.'

In the earlier case of General Medical Council v. Spackman (1943) 2 All E.R. 337 at p. 341 Lord Atkin expressed a similar view in these words:

'Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would therefore, demur to any suggestion that the words of Lord Loreburn, L.C. in Board of Education v. Rice (1911) A.C. 179 at p. 182 afford a complete guide to the General Medical Council in the exercise of their duties.'

With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in Board of Education v. Rice (1911) A.C. at p. 182 still affords as good a general definition as any of the nature of and limits on the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Viscount Haldane, L.C. in Local Government Board v. Arlidge (1915) A.C. 120 at p. 132 where he cites it with approval in the following words:

'I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn.

In Board of Education v. Rice (1911) A.C. at p.182 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view.'

From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in De Verteuil v. Knaggs (1918) A.C. 557 at p. 560:

'Their Lordships are of the opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.'

The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Harman, J., in Byrne v. Kinematograph Renters Society, Ltd. (1958) 2 All E.R. 579 at p. 599 of which their Lordships would express their approval. The learned judge said this:

'What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more.'

Turning now to the actual terms in which the vice-chancellor is invested with the quasi-judicial function here in question, it is to be observed that all that cl.8 provides is that where the vice-chancellor is satisfied that any candidate has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination "the vice-chancellor...shall report the matter to the Board of Residence and Discipline..." The clause is silent as to the procedure to be followed by the vice-chancellor in satisfying himself of the truth or falsity of a given allegation. If the clause contained any special directions in regard to the steps to be taken by the vice-chancellor in the process of satisfying himself he would, of course, be bound to follow those directions. But as no special form of procedure is prescribed, it is for him to determine the procedure to be followed as he thinks best, but, to adapt to the present case the language of the judgment of this Board in De Verteuil v. Knaggs (1918) A.C. at p. 560, subject to the obvious implication that some form of inquiry must be made, such as will enable him fairly to determine whether he should hold himself satisfied that the charge in question has been made out. As was said by Lord Shaw of Dunfermline in Local Government Board v. Arlidge (1915) A.C. at p. 138, of the authority there concerned it

'.....must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means.'

In the present case, no shadow of doubt is cast on the honesty and bona fides of the vice-chancellor or of those who sat with him in the commission of inquiry. So far as the plaintiff is concerned, it appears to their Lordships that he must be taken to have agreed, when he became a member of the university, to be bound by the statutes of the university, including cl.8, and, in the event of cl.8 being put in operation against him could not insist on the adoption by the vice-chancellor of any particular procedure beyond what the clause expressly or by necessary implication requires. In the absence of any express requirement, he is thrown back on the necessary implication that the vice-chancellor's procedure will be such as to satisfy the

requirements indicated in the passages from De Verteuil v. Knaggs (1918) A.C. 557, Local Government Board v. Arlidge (1915) A.C. 120, and Byrne v. Kinematograph Renters Society Ltd. (1958) 2 All E.R. 579, to which their Lordships have just referred, and thus to comply with those elementary and essential principles of "fairness" which must, as a matter of necessary implication, be treated as applicable in the discharge of the vice-chancellor's admittedly quasi-judicial functions under cl.8, or, in other words, with the principles of natural justice. The question, then, is whether the vice-chancellor did, in the course he took, satisfy those principles."

I quite realize that the decision of the Judicial Committee coming from a case in Ceylon was at no time binding on the Courts of Canada, but it is nevertheless the decision of a body having very persuasive power in its decisions. With respect, if I may be permitted to say so, it is a correct statement of the Common Law on the subject of investigations such as the present one.

It also should be remembered, as I have already indicated, that Assistant Commissioner Kelly's evidence was more than a mere recital or summary of the reports which had been made by the officers serving under him as Director of Security and Intelligence. He testified that he had been associated with security and intelligence work, with the exception of one period, since the year 1951. (That period was apparently from the year 1954 to 1958.) In consequence he was in all respects an expert witness in the fields of security and intelligence. As a result, the inference he drew from the admissions made by Mr. Spencer in his statement and from the reports of his officers, which he

summarized for the purposes I have already mentioned, had a validity, based on his extensive experience.

With respect, I would have thought that testing these inferences by means of cross-examination might have assisted one to a more balanced view of Mr. Spencer's activities, than the evidence itself would seem to warrant. However, Mr. Rankin did not see fit to pursue such a course of action and Assistant Commissioner Kelly was not cross-examined in regard to any facets of his evidence.

In making my investigation I have divided the evidence into two classes. There is a volume of the evidence taken at Ottawa, which was released at the beginning of the hearing in Vancouver, and there is a volume of the public evidence taken in Vancouver. The balance of the evidence, which was heard in camera, I have treated as a security transcript, and while in the course of my discussion of the matter I may quote from it, or sum it up, it does not concern itself with matters which in my opinion should be made public in this report, because it actively concerns the tactics used by the Royal Canadian Mounted Police in their anti-espionage work, the requirements of which apparently are more widespread and urgent than one would normally at first believe possible.

The security evidence and the Exhibits connected therewith I have filed with the Security and Intelligence Branch of the Royal Canadian Mounted Police, who have under-

taken to keep it together in their archives. In my opinion, if this evidence and material were published it would very substantially destroy the anti-espionage work of the Royal Canadian Mounted Police. It should not be left anywhere open to the general public for some years to come.

It was with these principles in mind that Assistant Commissioner Kelly was asked to sum up the reports of the investigation carried on by his branch, into Mr. Spencer's conduct.

It should be remembered that on his appointment to the postal service Spencer took two oaths. The first, an Oath of Allegiance to His Majesty King George the Sixth, and secondly, an oath relating to his work. I set these out in extenso as follows:-

OATH OF ALLEGIANCE AND OATH OF OFFICE AND SECRECY

provided by Section 43, Civil Service Act, Chapter 22 R.S.C. 1927 as amended 1947

POST OFFICE DEPARTMENT

OATH OF ALLEGIANCE

I George Victor SPENCER do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and Successors, according to law. So help me God.

OATH OF OFFICE AND SECRECY

I George Victor SPENCER solemnly and sincerely swear that I will faithfully and honestly fulfil the duties which devolve upon me by reason of my employment in the Civil Service and that I will not without due authority in that behalf, disclose, or make known any matter or thing which comes to my knowledge by reason of such employment. So help me God.

Subscribed and sworn before me

at Vancouver, B.C.

this 4th day of July 19 49

G. V. Spencer

[Signature]
A person duly authorized by the Governor in Council to administer such oaths, or a Justice of the Peace, Notary Public or Commissioner for Oaths.

CERTIFIED TO BE A TRUE COPY

[Signature]

ASSISTANT CLERK OF THE PRIVY COUNCIL

Power of government as to Mr. Spencer's dismissal

The section of the Civil Service Act (1961) under which Mr. Spencer was dismissed is section 50, s.s (2). It is as follows:-

"nothing in this Act shall be construed to limit or affect the right or power of the Governor in Council to remove or dismiss any employee."

This repeated in essence part of Section 52 of the previous Act.

It is interesting to note that when this section was discussed in Committee in the House of Commons after the second reading the concensus of the House seemed to be very much in its favour.

Hansard reports what transpired in Volume 8 of the 1960-61 Session, beginning at page 8576 as follows:

" On clause 50 - Tenure of Office
(translation):

Mr. Caron: Mr. Chairman, clause 50 introduces something which is extremely peculiar. Section 50(1) reads as follows:

The tenure of office of an employee is during the pleasure of Her Majesty, subject to the provisions of this and any other act and the regulations thereunder, and, unless some other period of employment is specified, for an indeterminate period.

Now the peculiar point is in subclause (2):

Nothing in this act shall be construed to limit or affect the right or power of the governor in council to remove or dismiss any employee.

I feel that the government here is assuming powers that are slightly too discretionary. It seems to reserve to ministers or to the governor in council the power

to ignore everything else in the act and, at their own discretion to dismiss whoever might be recommended to them for dismissal.

I feel it is not normal to include such a provision in the bill; I therefore move that clause 50 be amended by the deletion of subclause (2).

(Text):

The Deputy Chairman: Mr. Caron Moves:

That clause 50 be amended by deleting subclause (2).

Mr. Bell (Carleton): I shall have only two or three statements to make in connection with this amendment. This particular subclause is merely a preservation of the over-all prerogative of the crown. It is in the existing act and it was never repealed - a provision that nothing should impair the power of the governor in council to remove any deputy head, officer, person or employee. This subclause merely carries on that provision.

I think it is significant that the maintenance in this bill of this particular subclause which the hon. member seeks to delete was approved by all three members of the civil service commission who appeared before the special committee as witnesses. It is also significant that no representations of any kind were made in relation to it by any of the civil service staff associations. I think the hon. member is well aware of how carefully in clause 60 new provisions have been set forth dealing with dismissals and the right of appeal. This particular provision merely preserves the over-all prerogative of the crown, one which I am sure will not at any time be abused. In view of this I shall ask the committee to reject the amendment.

Mr. McIlraith: The subclause as it now stands reads:

2. Nothing in this act shall be construed to limit or affect the right or power of the governor in council to remove or dismiss any employee.

This appears on first reading to be very wide in its language and undoubtedly it is, but I do not see any way of restricting that right - one which I hope will never be abused, though in accordance with the language as it appears in the bill it certainly could be abused. But I do not see any satisfactory way of restricting that right. It seems to me that a government has to be held responsible for the

administration and the discharge of its duties and that in line with that responsibility there must be this power of dismissal.

I recall a situation which developed in this country some 15 years ago in which this power was of real value to a government. I am not aware of the provision ever having been abused. It seemed to me as I listened to my colleague moving his amendment that the circumstances in which this provision might be required were not fully understood, and I wonder if he would not consider withdrawing the amendment. I am not altogether happy with the language as it now stands, but I have nothing better to suggest.

Mr. Caron: I have now heard something about the reason why the provision was placed in this bill, and I think I can accept the suggestion of my colleagues not to present this amendment if that is the wish of the committee.

The Deputy Chairman: The amendment is dropped by consent.

Amendment dropped.

Clause 50 agreed to."

In the end no one from any of the Parties represented in the House apparently raised any objection.

It is a not unnatural deduction that one of the matters the House of Commons may have had in mind were cases affecting security.

It is, of course, deeply embedded in the law that it is the prerogative of the Crown to dismiss its servants at will unless exceptions have been engrafted on that power by Statute. Chitty in 1820 writing on the prerogatives of the Crown said:

"Offices may be granted at will, of which there are many instances; and it is a general common law rule, upon which, however, various exceptions have been engrafted by statute, that the King may terminate at pleasure the authority of officers employed by His Majesty."

Robertson nearly a century later in his book on the Law and Practice of Civil Proceedings by and against the Crown, states the situation as follows:-

"The principles involved in the above cases may be summarized as follows:- (i) Even if there be a contract of service, the Crown's absolute power of dismissal must be deemed to be imported into it, whatever its terms; (ii) it is not for the Court or a jury to discuss and decide upon the goodness of the grounds of dismissal, or to consider the question whether there were any grounds for dismissal at all; (iii) the Crown's absolute power of dismissal can only be restricted by statute, and anything, short of a statute which purports to restrict it, is void as contrary to public policy."

Reference may also be made to Dunn v. The Queen (1896) 1 Q.B. 116 (C.A.) where the Master of the Rolls, Lord Esher, who was a judge of great authority, commenting on a

decision of Lord Watson in the House of Lords said at page 118:

"In the first place it appears to me that no concluded contract is disclosed in the statements contained in this petition of right; and in the second place I am of opinion that such a concluded contract, if it had been made, must have been held to have imported into it the condition that the Crown has the power to dismiss. Further, I am of the opinion that if any authority representing the Crown were to exclude such a power by express stipulation, that would be a violation of the public policy of the country and could not derogate from the power of the Crown."

Reference may also be made to Lord Herschell's opinion in the same case following Lord Esher's judgment at page 119:-

"I take it that persons employed as the petitioner was in the service of the Crown, except in cases where there is some statutory provision for a higher tenure of office, are ordinarily engaged on the understanding that they hold their employment at the pleasure of the Crown. So I think that there must be imported into the contract for the employment of the petitioner the term which is applicable to civil servants in general, namely, that the Crown may put an end to the employment at its pleasure."

The right to dismiss summarily for reasons of misconduct has always been a right enjoyed by an employer in business or industry. I can see no reason why this right should be denied to the Government of Canada. In a large complex public service it is sometimes a necessity.

After the in-camera hearing at Ottawa and prior to the hearing at Vancouver on Thursday and Friday, May 5th and 6th, 1966, on my instructions advertisements were

inserted in the Vancouver Sun and the Vancouver Province on three consecutive days, namely, Wednesday, Thursday and Friday, April 20th, 21st and 22nd; that advertisement was as follows:-



**ROYAL COMMISSION
RE
THE COMPLAINTS MADE BY
GEORGE VICTOR SPENCER**

Persons wishing to give evidence on matters pertaining to the inquiry into the matter of the complaints of George Victor Spencer to the Prime Minister of Canada as to the nature of his dismissal from the Civil Service of Canada and the unfair deprivation of benefits associated with his job, such as pension and insurance benefits, should make their wishes known in writing to the Commissioner, Mr. Justice D. C. Wells, to the address below:

**Mr. L. Lafrance,
Supervisor of Royal Commissions,
Privy Council Office,
Room 130, East Block,
Ottawa, Ontario.**

In writing to this address interested persons should state the basis of their knowledge.

The Commission is particularly desirous of hearing from anyone who can give evidence which may explain Mr. Spencer's attitude and the reasons for his actions. This is important for his good name as he is not here to defend himself.

Only one response was received from a lady at Courtenay. I later quote part of her opinion.

Spencer's Confessions:

It may be of interest to examine the statement Spencer gave over several afternoons to Sergeant Low and Constable Dane.

He stated he was born in Whitwell, England on April 2nd, 1904. He came to Canada with his parents in 1907 where his family settled in Michel in the Province of British Columbia. He lived in various places in British Columbia and his formal education apparently terminated after two years in high school. He then started working as a garage mechanic. Later he apparently did many jobs and on his father's illness managed a hotel business which operated in Cumberland. He married in the year 1933 at Courtenay. He and his wife separated in the year 1936 and were divorced in the year 1942. When the last war broke out he had been unemployed for some time. He applied to the Royal Canadian Air Force and was rejected. He tried to get into the Royal Canadian Artillery but was rejected and enlisted apparently in the Army Service Corps in the year 1942. In the course of his service he made some very valuable mechanical suggestions in respect to tanks, on which he was working. These suggestions were tested and adopted, with the result that he received the recognition of the British Empire Medal.

He was discharged from the army in September 1945. In the interval his father had died and Spencer as an only child applied for compassionate leave as his mother had apparently tried to commit suicide after his father's death and might be described as having alcoholic tendencies. Spencer was very bitter about the delay in dealing with this application, which apparently arose from a mislaying of his

papers in the London offices of the Canadian Army. When he did get back he was unemployed but obtained Christmas work in the Post Office. This developed into part-time work and he stated that he was taken on permanent staff of the Vancouver Post Office in July of 1949.

During the depression years of 1936 or 1937 he became associated with the Canadian Communist Party and was accepted as a member. Because of arguments with his confreres he was apparently expelled in the year 1946, at which time the Party was known as the Labour Progressive Party. From that time up to his death he made repeated efforts to be re-instated in the Communist Party of Canada, as I believe it is now called, but these efforts were not successful. He had also become a member of the Canadian-Soviet Friendship Society and he stated that he attended their house meetings and functions and knew many of the people in this group.

Some time in the year 1956 Russian freighters came to Vancouver to pick up wheat and members of the Canadian-Soviet Friendship Society were apparently invited as a courtesy to visit the ships. He went with other people on several occasions and in the course of this he met the then Commercial Attaché of the Russian Embassy, one by the name of "AFANASIEV". Spencer apparently greatly desired to take a trip to the Soviet Union and with this in mind he had several meetings with Mr. Afanasiev. He stated that after these meetings he never saw him again and what later transpired is perhaps best expressed in his own words.

In his statement he said, at page 37 of the public Ottawa evidence:-

"About two years after this time I got a phone call to go to the corner of Main and Broadway to meet a person. I don't know who this person was but when I met him he told me he was a member of the Russian Embassy. He is not one of the photos shown to me. He asked me if I would fly to Ottawa to meet someone from the Russian Embassy. I had been inquiring for some time about visiting Russia and furthering culture exchanges and I agreed to go to Ottawa. I went to Ottawa and met this man and another man who looks like the photo shown to me of "BURDIUKOV". This meeting would have been on Saturday, October 8, 1960. On this trip I used the name McNiel. I also used this name for T.C.A. The purpose of this meeting was to discuss exchanges of a cultural nature. On this occasion I met the man who I had met at Vancouver who introduced me to a man who looks like the photo of BURDIUKOV. On this occasion the second man was interested in ethnic groups and about the various nationalities living in Canada. I felt there was a good chance of getting a trip to Russia and that the Russian Embassy had quite a bit of influence in persuading such groups as unions, etc., as to who should be able to visit Russia. It was therefore to my advantage to get a trip to keep on the good side of the Embassy Officials. I used the name "McNiel" because my mother being alone at home and it always being possible for a plane to crash I didn't want them to phone my mother to report my death. I had arranged with McNiel who at that time was living on Eton Street to handle any such messages should there be an accident. On this trip he asked me to get as much information on ethnic groups as I could; the various members; own schools, etc., and any general information about British Columbia. This conversation took place in my hotel room. After this conversation a future date was set for the next meeting. He was supposed to write to me to confirm the date. We always met on a Saturday, the time was always at 7:00 p.m. and the place the same as I previously stated. In letters to me he would say, "there will be a film available to show on (a certain date). If the date was acceptable to me I would reply, "we can show a film on (that certain date). If I could not make the trip I would say in my reply that I could

not show a film (on that certain date). We used these signals throughout our dealings. I would write to the film editor of the Soviet Embassy. The letters sent to me would be addressed in my own name and proper address. I think I addressed the Ottawa man as "George". I don't think I used a return address on my letters."

It would seem fairly obvious that Spencer regarded it necessary to make these trips in what might be described as "in a clandestine manner". The setting up of a system of signals for such meetings would indicate that he did not think that what he was doing was a matter that could bear the light of day.

Commenting on this portion, Assistant Commissioner Kelly said in his evidence:

"George Victor Spencer came to the attention of the Royal Canadian Mounted Police somewhere between the 5th and 9th of June 1956, when he was seen to contact a Russian intelligence officer by the name of AFANASIEV in Vancouver. At the time we did not pay too much attention to Mr. Spencer's meeting as it was during some celebrations as a result of Russians visiting the port of Vancouver.

"The next time Spencer came to our attention as the investigation shows was on the 8th of October, 1960, when he met in Ottawa two Russian intelligence officers by the names of Lev BURDIUKOV and Rem KRASSILNIKOV."

It is to be noted that the police investigation did not disclose what took place. On the 8th October at the meeting Spencer had with the two Russian intelligence officers, identified as Lev BURDIUKOV and Rem KRASSILNIKOV, Spencer was more helpful as the portion of his evidence I have just quoted shows. The fact that the Russians wanted information on ethnic groups and their members, if they had

their own schools, etc., and the setting up of a procedure for arranging future meetings should, in my estimation, have alerted Spencer to the fact that he was becoming involved as an agent of the Soviet Embassy.

The second meeting at Ottawa, of which the police have any knowledge was on March 4th, 1961, where Spencer again met Burdiukov. There was a third meeting at Ottawa on August 5th, 1961, with the same person. It was after this meeting that, in Spencer's own words, "when I first made contact with these people I did not think there was any ulterior motive, but after the third trip I suspected there was something wrong and I was maybe being used as an agent."

Despite these conclusions Spencer made four more trips and as he put it "things just did not seem right". He also said "after the last meeting in February of 1963 I was not getting any satisfaction about a trip to Russia and felt something was wrong. I could not see that anything I had done was of a subversive character. After this I got another letter for a meeting but I never answered it."

The taking of this statement of Spencer's is described in the evidence of Sergeant Low and Constable Dane. Sergeant Low's evidence was taken at Ottawa and the transcript of it sent to Mr. Rankin and he had something more than a week in which to consider it. Sergeant Low was also called as a witness in Vancouver to give further evidence of information

Spencer furnished him in describing his meetings with the Russian officers. Mr. Robinette had, previously to this, offered to call Sergeant Low for the purposes of any cross-examination which Mr. Rankin wished to make of him. The same offer was made in respect to Constable Dane. Mr. Rankin refused to avail himself of this opportunity and when Sergeant Low later was called to give the evidence about the conversations with reference to farms, Mr. Robinette again asked Mr. Rankin if he wished to ask any questions, and the answer was "no".

Three employees from the Vancouver Post Office were also called at Mr. Rankin's request. These were Messrs. Randell, Oliver and Myttenar. These were all men who had known Spencer through his activities in the Postal Employees Association, and their evidence does help to give one some personal impression of the late Mr. Spencer as they saw him.

Reverting now to the second meeting at Ottawa, Spencer describes what happens as follows:-

"I think it was again on March 4th, 1961, I met the man I think is BURDIUKOV in Ottawa, as we had arranged by mail. On this occasion I took with me some information on some ethnic groups in Vancouver. The Russians, Ukrainian, German, Chinese were included.

"The main interest was why these people left their home country and what their political inclinations were. They were also interested in Russian prisoners of war who did not return to Russia after the war. I think that the Russians wished to locate these ex-prisoners of war. I don't know why. I also took some

pictures of Vancouver. These were mostly of the poorer housing areas of Vancouver in the east end, generally the life of Vancouver people. I took some myself and bought some. I don't know why they wanted these. I have surmised that they wanted to show how people lived under our system. This is my own philosophy. I think I travelled again as "McNiel".

Spencer then in his statement alluded to this third trip on July 15th, 1961, and stated his fourth trip was on December 15th, 1961, and there was a fifth trip on June 2nd, 1962. In all these trips he dealt with the same man who looked like the photo shown him by Low of BURDIUKOV; it was identified by several RCMP officers as being that of BURDIUKOV.

The correctness of this identification is also emphasized by Spencer's identification of Burdiukov in a photograph in the publication Northern Neighbors for January 1962. (Vol. 6, No.1) page 8, filed as Exhibit No. 25. It appears under the general heading U.S.S.R. Salutes other Lands, other Peoples. In the magazine he is described as L. Bourdykov, Soviet Embassy secretary in Ottawa, telling U.S.S.R.-Canada society members in Moscow of friendly exchanges.

The third meeting according to the evidence of the Royal Canadian Mounted Police did not take place in July as Spencer stated, (though there may have been one which they missed). But the meeting which he described did take place on August 5th, 1961. Spencer summarized the effect of these meetings, and this begins at page 40 of the evidence where his statement is set out.

The portion relating to his trip around the course of the Trans-Mountain Pipeline will be set out later. Otherwise he described what took place at page 42 of the evidence given at Ottawa.

After describing the Trans-Mountain Pipeline trip he went on at page 42 of the evidence:-

"In addition to the above, I supplied general films of Vancouver -- I bought albums of these in Vancouver. I don't know how many albums I supplied but probably about six. Each album had about six or eight pictures. I supplied city road maps of Vancouver and district. He was interested in any firms that had become bankrupt. I was able to supply some information that I got from a private firm in Vancouver.

I supplied the names of about thirty or forty firms of assorted trades including that of some farms that were for sale. I am of the opinion that he was interested in bankrupt firms because it was indicative of our system. He was interested in schools and their teachings especially of foreign languages. He was interested in knowing if our schools had any anti-Soviet teachings. I couldn't answer this. He was interested in the early schools of Vancouver up to 1941. I got this information from the School Board and prepared a list for him. I have been shown a copy of this list that I had kept for myself.

He asked me about the lumbering, fishing and mining industries but I never supplied any material. I did attend at the Winch Building in 1961 or 1962 and obtained five or six maps of the lower mainland as far as Chilliwack. These maps contained everything, showing boundaries, railways, harbours, airports, bridges, highways and other details. I supplied these to the man in Ottawa. They could also show the water supply system for Vancouver. I think I made two visits to this office. I think these maps only went as far south as the USA-Canada border. I did not supply any maps of the U.S.A. other than shown in the local road maps.

He was interested in the procedure for crossing the U.S.-Canada border and the forms required for

emigrating to the U.S.A. I got some U.S. Immigration forms at the U.S. Consulate and gave them to my Ottawa contact. He never made any inquiries about universities.

He inquired about tourists visiting Vancouver, but I didn't supply any material. I supplied pictures about the general type of clothes people wear in the Vancouver area. No mention was made of any identification of people with respect to vital statistics. He inquired about drivers' licenses -- for instance, if a B.C. license was good in Alberta. I did supply some information regarding motels and hotels where rooms were available and may have given him a copy of the B.C. Directory Tourist Accommodation book.

In September 1962, I went to the Windsor Convention of the Canadian Postal Employees Association. After the convention I went to Ottawa on personal business and also had a meeting on Saturday, September 22nd. I also made a meet in Ottawa on November 24th, 1962. At one of these meetings I met another man who was not the person with whom I had previously been meeting. He met me at the usual meeting place and time. We did not have any recognition signals. He told me that he was from the Embassy and taking the place of the other man.

I think it was on the last two occasions when I met with the second man that I took him for a ride in the car. He insisted on getting into the car and going for a ride.

On the first time I took this second man he asked to drive the car. I permitted him to. He would stop on occasion and we would talk. We talked about the things that the first man asked me to do. I'm not sure but I think I gave this man some material on bankrupt firms. I think I also gave him the maps I got in the Winch Building.

I had been told quite some time before this that it would not be a good idea to go to the Embassy. This was not definitely explained to me but they said as anyone that had anything to do with Russians might be suspected. I think it was on this trip in November 1962 that I went to the Embassy to see the Film Editor as I wanted to get cleared up as to what was going on. They didn't want to sit down and talk. Things just didn't seem right. I accepted this at the start, why, I don't know. I got to the main door of the Embassy

and was told that I would meet my man at the same pre-arranged time. On the last meeting, in February, of 1963, I wrote them that I would be able to show a film on that date. They did not request me to go at that particular time. I met the second man again. He wanted to meet me at a new place in Ottawa. I agreed to meet him at this new place but I never went back. I didn't give him anything at this time. By this time I was not getting any satisfaction about a trip to Russia and felt something was wrong. I could not see that anything I had done was of a subversive character. After this trip I got another letter for a meet but I never answered it.

During my correspondence with the Soviet Embassy we did not use any special markings, etc., on the envelopes.

During all my trips to Ottawa I would only get my actual expenses reimbursed to me. I never did get a bonus. When I first made contact with these people I did not think that there was any ulterior motive but after the third trip I suspected there was something wrong and I was maybe being used as an agent."

The interpretation which Assistant Commissioner Kelly alluded to and on which I had hoped Mr. Rankin would cross-examine him, places a very grave and sinister meaning on the revelation by Spencer of this apparently reasonably innocent information. Based on Assistant Commissioner Kelly's experience in intelligence work, I think it may be fairly said that all this information that was asked for laid the foundation for the establishment of an intelligence "net", as it is sometimes called - in British Columbia. Elsewhere, Assistant Commissioner Kelly regarded the request that the addresses of a number of farms which were for sale in the southern part of British Columbia was a very significant one and in his opinion related to the acquisition of suitable property for the establishment of a Russian Intelligence

Service illegal network. The location of the farms, close as they were to the U.S. border suggested that the illegal residence, as it would be known, would be operating chiefly espionage agents on the West Coast, possibly both in Canada and the United States. Indeed, many of the Russian requests of Spencer could be used for documenting a foreign person as a Canadian for espionage purposes anywhere in the world.

An illegal residency and an illegal were described by Assistant Commissioner Kelly as individuals who were working for Russian intelligence service under a cover which makes their identities as intelligence agents of the Russians almost impossible to detect. The better the cover the better they are able to evade detection of the counter security service. The "illegal" was described as one who perhaps for a time during his development is serviced or controlled by a Russian intelligence officer residing in the country but the aim of the intelligence service is to have this man so "covered" that he will not need, certainly will only need a very limited servicing from the resident intelligence service officer. And the hope is that this person may undertake tasks without any assistance of other agents and, who simply reports, and who can be relied upon to take directions by way of radio from a centre outside of the country in which he is operating.

In contrast to the so-called "illegal" is the officer under the cover of some diplomatic status but who is actually in point of fact an intelligence officer for the country he represents.

Spencer was also instructed, the investigation shows, in the operation of dead letter and live letter boxes. He was instructed to increase the amount of mail to his home by writing more letters to relatives. He was also sent test letters which he was supposed to send back unopened with special blots of ink on them or with a corner cut off one of the stamps. This was to demonstrate whether or not anyone was tampering with any of his mail.

Assistant Commissioner Kelly defined a "dead letter box" as a place where a message could be left by one person and then picked up by a second person without the two persons coming into contact: and a "live letter box" is the simple arrangement with another person to have his address with his knowledge and permission, used as a mailing address for a person who would then pick up his mail at that point, or have it delivered to him in a secret fashion.

In Spencer's case instructions were given him to increase his intake of mail by writing to more relatives or persons who would respond, so as to increase the volume of his mail. In this way if there was a sudden increase it would not stand out and become a matter of suspicion. Also

if he received a large quantity of mail, additional letters, such as the test letters with special blots and stamps with the corners cut off, would not be noticed by the letter carrier or the sorter in the Post Office.

Another task which Spencer mentioned was the obtaining of information about ethnic groups or associations in Canada and particularly Russian ethnic groups, which include the Ukrainians. Assistant Commissioner Kelly said the object of the intelligence service in this particular sphere was that one of their primary responsibilities is to penetrate these groups and to collect information concerning emigré organizations. The main purpose is to ascertain the views of these groups and if they are hostile to the Soviet Union. There is a responsibility on the foreign intelligence service of neutralizing this anti-Soviet activity, possibly by means of disruptive tactics in the organization. Then there is what Assistant Commissioner Kelly called "character assassination" in these associations.

The third point of interest is that any foreign intelligence service operating in Canada has the responsibility of recruiting emigrés through coercive measures, sometimes by means of threats or reprisals to relatives residing in the home country, and using the pressures thus exerted, to use these recruits for intelligence collection purposes.

In addition to the information Spencer was asked to obtain, that is, Custom regulations, immigration procedures

on border points between Canada and the United States and information concerning the movements both ways across the border, he was also asked and did furnish Burdiukov with photographs of Vancouver City and information on auto courts and general tourist information. He was also asked to obtain descriptions of local clothing, general customs and fashions and the kind of clothes worn by local people. He was asked to provide the location of logging camps and machinery repair shops operating in B.C. between 1943 and 1952. He was also asked to obtain the names of slaughter houses and apartment houses that were no longer in existence and the names of service stations for sale in the Vancouver area.

In June 1962 Spencer gave Burdiukov his original driver's licence from B.C. and a second licence belonging to an unknown individual. He obtained a duplicate licence in May, 1962, and another duplicate in November, 1962. He was asked to supply biographic data from headstones in graveyards and he was asked to supply the names of any "card carrying" railroad employees and to include the name of a reliable ex-Communist party member.

He apparently furnished Burdiukov with lists of bankrupt businesses and lists of schools and dates when they were opened.

All this was of great assistance to a foreign intelligence service in providing what is known as "illegal legends", or "Legends" for illegal agents. Assistant Commissioner

Kelly was asked what he meant by legends or false history and his answer is I think worth putting on record, because it appears to indicate a background for seemingly innocent information which Spencer was asked to obtain and which he did obtain on his own admissions, and passed on to Mr. Burdiukov, at pages 42 to 44 of the evidence.

"A. A legend is a false history, including false documentation, and the significance of obtaining information concerning defunct businesses, schools that had been destroyed, businesses that had been destroyed, so that the individual concerned, with a legend and being an illegal, would be able to receive documentation which could not be checked because the business in which he worked, if he were a slaughter-house employee and the slaughter-house that he was supposed to have been employed in had been destroyed, there was no possibility of going back or little possibility of going back and checking there to ensure that he was or was not the person his documentation showed him to be.

Q. In other words, the false documentation could not be checked?

A. Could not be checked. As in the case of Lonsdale, the famous Soviet spy, Lonsdale's documentation arose out of the Haileybury area, knowing that the

records office in Haileybury had been burnt down many, many years before so that there was no chance of checking at a proper records office to see whether his documentation was correct or not.

The schools in the Vancouver area; and again he was requested to provide schools that had been torn down. It meant that his school record could be falsified and there was no school to go back and check at. Perhaps they didn't know that records of schools are kept in other places.

So clothing and local customs meant that they could send somebody in properly documented from the outside and he would not stick out by wearing a suit which had gone out of fashion years ago. In other words, with knowledge of the habits and customs of the people he would be able to fit into the community with little or no suspicion. In so far as the driver's licences and identity cards are concerned, this is a major preoccupation with Russian Intelligence Services so that they always have on hand for the purposes of illegal agents samples of the licences in the country concerned, so that they are able to provide licences in keeping with the present type of licence."

Logging camps and machinery repair shops which had gone out of business also provide a basis for the documentation of the foreign illegal who is intended to operate in Canada.

Tombstones have somewhat the same value. In respect of tombstones I again quote Assistant Commissioner Kelly's evidence:-

"A. Yes, I was coming to that. We think that the reason they wished to have this information was that they intended to send somebody to Canada under the names and in the age group of the person who had died, the age of the person at the time he was sent in. For example, if a person had died in 1930 at the age of two, in 1950 that person would be twenty-two. This would enable them to get documentation in the name of the person named on the tombstone and send the person aged twenty-two to Canada with with the false documentation in the name of the person who died twenty years before, knowing that there was less chance of the illegal running into his namesake because that person was known to be dead.

Q. But the illegal entrant in his false documentation would have documentation which indicated the date of birth that would be shown on the tombstone, or just a date approximate to that?

A. The date of birth on the tombstone, the place of birth and the name, and then Spencer would

be able to go to the provincial statistics and get a copy of the birth certificate which showed the registration and so on, so that the Russians would have the full documentation to support the illegal on whom they were working."

In the result it is to be observed that a great deal of the evidence given by Assistant Commissioner Kelly, which well merits reading in full, was not based on hearsay in the sense that he was commenting on reports furnished him by officers in his Branch, but was based on admissions made by Spencer in his written statement to Sergeant Low and Constable Dane. In certain particulars this was reinforced by reports of investigating officers, but much of the essential material as to what took place in my opinion appears to be fully stated by Mr. Spencer himself.

Mr. Spencer himself stated at the conclusion of his statement -

"During all my trips to Ottawa I would only get my actual expenses reimbursed to me. I never did get a bonus. When I first made contact with these people I did not think that there was any ulterior motive but after the third trip I suspected there was something wrong and I was maybe being used as an Agent."

On giving his evidence Sergeant Low at page 77 was asked how he took the statement, and he explained that what he wrote out was in answer to questions, and I subsequently learned that he had a tape recording of all the questions

and answers between himself and Spencer which is available, and when asked if he wrote the questions down he said "I wrote his answers in a story-like way." He then gave evidence that Spencer had read the statement, which was some 15 pages long, and he then initialled the bottom of each page and he initialled certain corrections and signed it at the end "G.V. Spencer." Apparently in the course of his initialling the statement he indicated corrections which ought to be made, and they were made and initialled by him.

I will have something to say later about monies which were paid Spencer by the Russian agent, BURDIUKOV. The evidence is somewhat in conflict.

There are three other matters concerning Spencer's activities with which I think I should deal. One, the information furnished Burdiukov in respect of the security arrangements in the Vancouver Post Office, two, the information furnished by Spencer to Burdiukov re the acquiring of farms in southern British Columbia, and the third, the trip he took to chart the course and installations on the Trans-Mountain Pipe Line.

Spencer's revelation re security arrangements in the Vancouver Post Office.

On the basis of the evidence placed before me there is no doubt that the Russians were attempting to learn through Spencer as much as possible about the inner workings of the Post Office. Spencer passed to the Russians what he knew in this area.

On March 4th, 1961, Spencer conveyed to Burdiukov information about the "security" arrangements in the Vancouver Post Office. Spencer advised that there was a Department that did many things that would come under the heading of "security". He was referring to the Investigation Department of the Post Office. Spencer conveyed the impression that the checking done in the Post Office was what they were actually told to check and that only once did he actually see the "security" people stop a bag and open it, at which time he was told that they were looking for "dope".

He explained to Burdiukov at this time that they had been told to watch for raffle tickets or Irish Sweepstake tickets. He explained that it could happen to more things than just dope and tickets, and that when instructions were given to stop something they could stop anything they want to.

Burdiukov asked him if somebody wrote a letter to somebody else was it possible to stop it, and Spencer advised him to the effect that the Post Office could stop anything. Spencer gave Burdiukov an explanation of the workings of the Post Office in the area in which he was employed. He described how the letters were sorted and put into appropriate pigeon holes for the mail carriers who were responsible for the mail delivery in specific sections of the city. It was at this point, according to Spencer, that when being handed to the particular mail carrier the mail on the "watch" list would

be checked. It was indicated that it was a simple matter for the Post Office to check mail. He explained that the checking was done at that point in the Post Office sorting procedure where there were the fewest letters directed to the addresses in the areas of interest to the Investigation Department. He also advised Burdiukov that the mail carrier took his mail from a pigeon hole, one of which was provided for every mail carrier.

According to Spencer a further discussion took place with Burdiukov on July 15th, 1961. The evidence however, makes it clear that he was confused and this meeting took place on August 5th, 1961. At this time he was requested by Burdiukov to increase the amount of mail arriving at his home if possible. Spencer understood that this request was made to avoid any sudden increase in the volume of mail being received by him being looked upon with suspicion by the Post Office authorities. This was the occasion when Spencer and Burdiukov came to an arrangement about the way that Spencer should handle the test letters. It was suggested that Spencer should get in touch with his English relatives by mail and, who in turn could write to him, thereby increasing the flow of mail to his home address. Unfortunately they appeared to be dead.

Spencer also advised Burdiukov that a little corner torn off a stamp would not result in a letter being stopped, nor would any attention be paid to any particular markings on the envelope flap.

Spencer also advised that he was receiving mail in three different names for certain reasons. He used the name of Wilson in one case in order to hide the fact from his fellow workers that he was in receipt of a Communist publication to which he was subscribing. Spencer explained that in the Post Office they thought of him by name rather than by an address.

He also explained to Burdiukov such matters as general delivery and the use of mail boxes. He said that a great deal of mail went through to and from Russia and that no attention was paid to it, and that one of the purposes of the Investigation Department was to see that stolen goods were not transmitted by mail, and to stop the circulation of raffle tickets and Irish, Australian and American Sweepstake tickets.

He pointed out that he had never been asked to stop any particular mail, neither did he know of any other sorter who had been requested to do so. Such checking was done through the carrier, but sometimes even independently of him.

He also advised on what observations were made on the sorters in the Post Office by those in authority as well as the procedures surrounding the handling of registered mail.

His discussion with Burdiukov also covered the speed with which mail travels from one part of Canada to another, and assured him that sending mail through the Post Office was a safe procedure as no mail bag was checked without a definite order.

The information passed to Burdiukov by Spencer is obviously of value to anyone who was going to use the mail for espionage purposes. It was an obviously safe vehicle in Spencer's opinion. It was true none of it was tremendously significant, but Spencer had taken an oath of office and secrecy, which included the provision "I will not without due authority in that behalf disclose or make known any matter or thing which comes to my knowledge by reason of such employment". This quite obviously covered what came to his knowledge in the Post Office at Vancouver.

It is quite possible that if for reasons of administration and organization the Russian Government had gone through the proper channels, the Post Office Department of Canada would have furnished much of the information on the handling of mail - I do not know, but in Spencer's case he was giving this information for a purpose of his own, namely the obtaining of a trip to the Soviet Union. He did this without any authority from anyone above him in the Service and in direct contravention of his oath.

It would appear that for the purpose of security when establishing an espionage network it is necessary to obtain even relatively simple information in a clandestine manner if the security of the operation for which the information is ultimately obtained is also to be a clandestine one. This is obvious if the collection of such information is for the purpose of establishing a network such as Burdiukov or his

directors apparently intended. It seems clear that Spencer was being used only in the initial and foundation arrangements. This explains the apparently innocent nature of much of the information that he was asked to obtain. When however, these requests are put together and examined collectively they assume an entirely different aspect.

Information furnished by Spencer to Burdiukov as to the
Acquiring of Farms in Southern British Columbia.

In the evidence I have already quoted Mr. Spencer said, and I think it is worth repeating, as it is not long -

"He was interested in any firms that had become bankrupt. I was able to supply some information that I got from a private firm in Vancouver. I supplied the names of about thirty or forty firms of assorted trades including that of some farms that were for sale."

In his evidence given in Vancouver Sergeant Low was recalled and at page 212 he explained that he had taken a tape recording to record everything that was said between himself and Mr. Spencer when he was taking his statement from him, and since giving his evidence in Ottawa he had taken advantage of an opportunity to check his tape. He was then asked whether during his discussions with Mr. Spencer the question of farms had come up and his answer to that was "Yes it did", and at the bottom of page 212 Sergeant Low said

"Yes. At the time when we were discussing the bankrupt firms, Spencer said 'they asked me about some of the farms that were selling out, small farms.' I said to him: 'You supplied thirty or forty firms with assorted trades, would that be it?' He said 'Yes'. I said 'Including some farms that were for sale?' and he said, 'Yes, including farms that were for sale.'"

"Later in that same interview Spencer said 'He never asked me about the legal documents of transferring the farms. He asked a question like this: how can you find out about farms that were going?'

"Spencer said, 'I think any real estate agent could tell you right away. If you took the papers up you can find out. You can read it in the newspapers; get to know there is a farm for sale and then you can find out about it; check with the real estate people.' He said he never inquired about the documents necessary to transfer a farm."

As I previously noted Assistant Commissioner Kelly regarded the request about the addresses of farms for sale in southern British Columbia close to the United States border as suggesting the establishment of illegal residences for the operation of espionage agents on the West Coast. I am satisfied that Spencer went to a great deal of trouble to obtain information on farms that were for sale in Southern British Columbia and passed it to the Russians.

He was also asked to obtain data from headstones in the graveyards and to photograph several headstones for this purpose, and he was asked to obtain the name of one Japanese person in this way. He also furnished Burdiukov, as I have already mentioned, British Columbia drivers' licences. All these things in Assistant Commissioner Kelly's opinion indicated that the Russian intelligence service was pre-occupied with obtaining the material by which to set up false legends, or antecedents for their agents. He called them legends, and I have already set out his comments on this matter. I mention these matters because it is another

indication of Spencer handing over to the known agent of a foreign power information innocuous in isolation, but, when related to the other information he gave, it has a somewhat sinister meaning, and seems to me to have been part of the provision by Spencer to the Russians of basic information which would enable them to set up a network of secret espionage on the West Coast.

Information furnished to Russians by Spencer about the Trans-Mountain Pipeline.

In Vancouver Corporal Hollas told of being one of a party who followed Mr. Spencer in a trip around the Trans-Mountain Pipeline in 1961. The trip started on the 30th May in that year, and at that time Spencer was accompanied by a male companion. Hollas related in some detail how Spencer followed the course of the Pipeline, which in time of war would be admittedly of the greatest assistance in supplying the West Coast with oil and gasoline, and of how he took pictures, which he and his companion attempted to duplicate, of the principal installations on this pipeline. Spencer himself has quite a considerable amount to say about it, and in the course of his statement he gave a somewhat detailed story of how he went about it. As he said at page 40 of the evidence:-

"In all these trips to Ottawa I dealt with the same man who looks like the photo of BURDIUKOV. During my various discussions with this man he showed interest in many things and we discussed the Trans-Mountain Pipeline in which he showed

particular interest. I told him that I was going on a holiday up that way and would take some pictures for him. I took this holiday probably in June 1961 and travelled by car from Vancouver up the Fraser Canyon to Prince George to Dawson Creek about 50 or 60 miles up the Alaska Highway, back to Dawson Creek to Grande Prairie, Edmonton, Jasper, Cranbrook, Fernie, Crows Nest Pass and returned by Cranbrook across the border to Spokane and back to Vancouver via the Hope-Princeton Highway. During my trip I took photos of the refinery at Taylor, B.C. and what I thought was a pumping station between Edmonton and Jasper. In that area there are a large number of oil tanks and pumping stations. I took both movie and still-camera films of these places. I subsequently gave this same man pictures of my trip.

On this trip I paid cash for all car expenses. The first night I think I spent at the Twilight Lodge motel at Lac la Hache. I spent the second night at Halfway Lodge. I spent the third night at Grande Prairie in a motel whose name I don't remember. The fourth I stayed at a lodge-motel somewhere near Wildwood, Alberta - about 50 to 60 miles west of Edmonton. The next night I stayed at a nice hotel in Jasper. I had another man whose name I would rather not mention. We had an argument at Edson and we parted company. The next night stopped at Fernie, at the Northern Hotel. The next night at Idaho I slept in the car as I had to stop due to becoming sleepy. The next night I stayed at a motel or hotel at Keremeos where there is also a beer parlour. I returned to Vancouver the next day. I took this trip before July 15th, 1961. I don't remember the exact dates. During this trip I took one roll of movie film and two or three rolls of still pictures. I had these films developed locally. I gave the roll of movie film and some general still pictures, these included pictures of the Fraser Valley, of mountains, of oil tanks, towns -- general view of coming into some towns. I have been shown two negatives of a bridge and pipeline going across a river. I could have supplied my Ottawa contact with this. I have been shown six negatives of highway scenes, I cannot identify these scenes but I possibly could have supplied these. I have seen two negatives of my house, I don't know if I supplied these or not. I have been shown four more negatives and corresponding

pictures, one of a school, one showing B.C. Hydro transformers, one showing a street scene with Waldorf Hotel sign and one showing a garage. I do not think I supplied these as I still have the pictures and I never got any duplicate copies."

It is perfectly clear that there is nothing of a secret nature about the situation of the Trans-Mountain Pipeline which could not have been obtained by any Canadian. I think the point is that Spencer was a Canadian who was obtaining it while he was in the employ of Her Majesty's Government in a neatly parcelled up fashion for the benefit of the agents of the Russian Government. It is argued, of course, that there was nothing wrong in this, and I will deal with that aspect of the matter later, but there is no doubt that Spencer obtained a set of maps and pictures which would be invaluable in the time of war, if Russia were on the opposite side. In fact he furnished a great deal of concentrated information for Mr. Burdiukov which he (Burdiukov) probably would have had great difficulty in obtaining without detection. Burdiukov is described as a man having a heavy Russian accent. I question whether, if he had been following the Pipeline around whether he would not have become an object of great suspicion, which in his calling it was desirable to avoid. Spencer saved him this trouble and collected a great deal of useful information for him.

In considering these matters I have placed great reliance on Mr. Spencer's statement given to Sergeant Low.

Sergeant Low by questioning apparently evoked the story from which I have quoted so fully. No objection to the statement was taken by Spencer's Counsel and Executor.

I have had the advantage since Mr. Spencer's death of seeing the television interview by Mr. Jack Webster of Vancouver of Spencer which was shown on the C.B.C. television stations through the programme "This Hour has Seven Days". I also had the advantage of a transcript of that interview in full. Spencer was continually dodging the issues raised by Webster. Mr. Spencer over a very considerable period of time very skilfully evaded Mr. Webster's most searching questions. The total result of my observation was a most unfortunate one. Apparently Spencer's idea of his activities was that he had not given any information to the Russians which would hurt Canada. He said he had never betrayed his country. He admitted that he was friendly to the Soviet Union, but when it was put to him that his actions in transmitting this information to an agent of the Soviet Union had been wrongly interpreted, very curiously he stated "No I couldn't agree with that. I don't think the authorities have misinterpreted what has happened. I don't..... uh....there's nothing in their statements to show that there's anything to misinterpret. They've been very fair as far as I'm concerned."

He said he had never been warned that he might be charged, apparently had the impression that he had been cleared.

He, however, did not feel much persecuted and he did not think that he had been convicted in the eyes of the public. He said he had wanted to go to Russia to see something he had heard about, something that would have helped him and his mother. He apparently thought it was something which would lead to security and contentment in the Canadian population.

He refused to say "yes" or "no" to a question that he had received several thousand dollars from the Russian Embassy. He did not feel that his rights had been violated. He said that the Royal Canadian Mounted Police had not used any tough methods with him. They had been very kind, that their questioning of him did not interfere with his treatment in any way, and he was asked if threats had been put to him, and if the police had put a muzzle on him, and he said "not that I know of".

Webster then said "Have they given you any inducement to stop you from talking as an innocent man?", and Spencer replied "Uh...not the R.C.M.P., no." He then went on to explain that friends and lawyers had given him advice. He said he had never told his friends anything more than he had told Webster.

He was then asked whether he was under a threat from anybody not from the Mounties but from anyone else, and he said "Not as I know of. My biggest fear is to be able to get - to be in a crowd where they get drinking and then

somebody under the influence of drink gets mad and sore and... if you'd have seen me for two or three days after the first of January when the snow was on the ground and I wondered, well if somebody was - maybe recognize me - and I had to go and shovel the snow away from the car and go down and get a bed in the hospital so that I could be taken care of properly, then you could understand that I do have fears."

It is very hard to comment intelligently on Spencer's state at the time he was interviewed by Mr. Webster. Whether he himself thought so or not, as far as observation would lead one to come to a conclusion, he was still a very sick man and subsequent events have, I think, confirmed that impression.

There is no evidence of suggestion, however, that he was a very sick man, or a man who did not know what he was doing, in the years of 1960-1963 when he was supplying Burdiukov with the information he obtained for him. It is, I think perfectly clear that at that time he must have known what he was doing and that he was doing it because he hoped to get a trip to the Soviet Union.

In response to the advertising which was done in Vancouver, no one came forward but a lady from Courtenay, who wrote me a letter which I received on my arrival in Vancouver, and who apparently had known Spencer from his childhood. While I have not space to quote it all, an

explanation of his actions may be expressed in the sentences in which she said

"The good Lord gave him a greater capacity for feeling than for thinking.

"Vic was sorely troubled by the manifestations of a sick society. He was much more concerned that his class-mates were dropping out of school because they lacked shoes, or because their ambition could not be sustained by oatmeal for breakfast, macaroni for lunch, and pork and beans for supper, or shall we say living off the contents of the CARE? packages as specified by the friends of the Government in power at that time, and these specifications laid down to the local merchants on an "or else" basis, than he was about his own future.

"Vic's main problem then was mathematics, nothing ever added up. Those who watched his tortured expression, or listened to him on the television while he labored for words, while he tried to express that he had no animosity for the police, the Government, the press - those who exposed his private life like a perch in a goldfish bowl. Vic himself was groping for the answers and they just didn't add, he still couldn't find the answers."

Before I deal with this situation I think that I should deal with one other matter which was raised by Webster in his interview, and that was whether he took money from the Soviet Embassy. Investigation I think shows that without question he did take money, but it may very well have been limited to expenses, perhaps expenses conceived on a generous basis, but nevertheless in main, expense money.

At the end of Spencer's statement he said:

"During all my trips to Ottawa I would only get my actual expenses reimbursed to me. I never did get a bonus. When I first made contact with these people I did not think that there was any ulterior motive but after the third trip I suspected there was something wrong and I was maybe being used as an Agent."

The estimate of the police is that he received for the seven trips from Vancouver to Ottawa somewhere between \$3,200 and \$3,500. Mr. Mortimer was reported by Mr. Cederberg of the Toronto Telegram to have told him that on one occasion Spencer admitted to him that he received around \$6,000. This was put to Mortimer in examination in Vancouver when he appeared before me, and he said that that story was wrong. "it is not accurate". He was asked if he (Spencer) had discussed Russians at all, and he answered "No, actually no, he didn't."

Mr. Cederberg was also examined by me on my return to Toronto; he very frankly said that he definitely remembered this conversation with Mr. Mortimer and he gave several circumstantial details about the conversation which convinced me that he had a basis for his memory. He said, however, he thought the sum mentioned by Mortimer was \$6,800, and he thought the sum of \$6,000 mentioned in the newspaper was probably a typographical error. I took the liberty of having this evidence shown by officers of the Royal Canadian Mounted Police to Mr. Mortimer in Vancouver. I quote from their report as follows:-

"Mortimer steadfastly denied that he told Cederberg or any other reporter that Spencer had received any amount of money from the Russians. He explained that he could not remember which of the reporters was Cederberg, but since only one of them had raised the money issue, he assumed that Cederberg must have been this man, and he described him as a big, heavy-set man. After reading pages 255, 256 and 257 of Cederberg's evidence, Mortimer said that the testimony was wrong in that it was Cederberg who told him about the money, and it was Cederberg who also told him that he had a source who was a member of Parliament. This source, whose identity he could not disclose, had told Cederberg that Spencer received \$7,000 from the Russians and that Spencer had made several trips to Eastern Canada. Mortimer claims that he cannot specifically recall what his reply was to this statement but believes he may have said something to the effect "that probably is correct". At any rate, he emphatically states that he did not discuss with Cederberg or put forward any suggestion regarding the amount of money that Spencer was alleged to have received.

"Mortimer was questioned for about thirty minutes regarding the variance between his testimony and that of Cederberg. He remained adamant in his insistence that it was Cederberg who made the statement to him regarding the money and that he at no time discussed this with him, other than passing some trivial comment after hearing Cederberg's story about the source of his information being a member of Parliament. Mortimer said the he was now sorry that he did not make mention of Cederberg's story to him when testifying at the Inquiry."

It may very well be that Mortimer wished to appear as one having more knowledge than he actually had, and on being called in Vancouver to testify under oath, may have realized that he was not in a position to truthfully say that Spencer had told him this. However, it is quite clear, I think, that Spencer did receive money. In my opinion, I would, if I had to choose between Mortimer and Cederberg, accept

Cederberg's story in preference to that of Mortimer.

However, that does not advance the matter very far, because I do not know how accurate Mortimer was then or later. What probably happened was that Spencer got his actual expenses plus some reasonable amount in pocket money, which he may very well liked to have received. There is no question but that he accepted money each time he made a trip, and his definition of actual expenses may have been somewhat elastic.

One's sympathies are aroused by the pitiful condition in which Spencer's life came to an end. But at the time when most of these events occurred Spencer was a Civil Servant in good health. He was an official of the Postal Workers Association and apparently a good one. There is nothing to indicate that he did not know what he was doing, and the fact that he was obsessed with the desire to get someone to send him on a trip through the Soviet Union does not, in my opinion, excuse him.

Civil Servants are in a somewhat special position. They are servants of the Queen's Government in Canada, they are paid by the citizens of Canada and they have, perhaps more than ordinary citizens, an obligation to have a sense of responsibility and of loyalty to Canada. Faithfulness is a quality that could reasonably be demanded of them at all times as well as faithfulness to their Oath of Allegiance and to their Oath of Secrecy.

The Shorter Catechism of the Church of Scotland starts off with a very pertinent question, and that is "What is the chief end of man?" and the answer is "Man's chief end is to glorify God and to enjoy him forever." If such a man is a Civil Servant in Canada, the second end of his life is complete loyalty and faithfulness to Canada.

The giving of information to assist the known agent of any foreign power without proper authority to give such information is misconduct of a gross kind. It does not at all add to or detract from Spencer's culpability that in this case the information was furnished to an agent of the Government of Russia, or as it is more properly called, the Union of Soviet Socialist Republics. It would have been equally reprehensible in my opinion had it been given to the agent of any foreign power whatever, unless there was due authority given such Civil Servant by the proper Government authorities to transmit such information. It is a very naive view of the situation as Mr. Rankin argued at the close of the hearing in Vancouver to say that on the evidence shown the information handed out by Spencer was not secret or classified information, and was harmless, and that he could not be guilty of misconduct unless in the giving of information he was guilty of an offence under the law; that is, as I conceive it, the law relating to Treason or offences under the Official Secrets Act.

Quite frankly I would have the greatest doubts myself whether Spencer could have been successfully prosecuted for these offences. What he did, however, was very close to the line and quite a strong argument could have been made against him, but quite frankly, and for what it may be worth, I would express the personal opinion that it would be straining the language of Section 46 of the Criminal Code, Sub-section (e) or of the Official Secrets Act to initiate a prosecution under those Statutes. That does not mean that Spencer was not guilty of the grossest misconduct in his office. A civil servant does not have to commit a crime to merit dismissal. There are lesser forms of misconduct, sometimes quite serious ones. In my opinion he was guilty of such gross misconduct that the Government of this country would have been culpable if they had not discharged him from his duties.

At the time this matter was being considered, the information they had was, as I have noted earlier, that he might be dead within two or three months; that if the cobalt therapy had actually arrested the growth of the cancer he had one in ten chances of living up to five years and he was in danger of brain paralysis at any time.

To prosecute a man in this condition would have been almost indecent and in my opinion Spencer was treated by the Government of Canada with forbearance and fairness.

I was also asked by the Order in Council and the Commission whether in my opinion Mr. Spencer had been dealt with fairly, and if not, what rectification appeared to me to be fair. I think that I have indicated that in my opinion he was treated fairly. Had he been still alive and in want, in view of his physical condition and his long service, some consideration might have been given as a pure matter of compassion and grace, and in view of his somewhat distinguished war service, without any obligation whatever on the Government to do so, to giving him some assistance in place of the pension which he had lost. He did, however, receive under the Statute, quite fairly all that he was entitled to by way of return of his own contributions to the pension fund. It may be of interest to know what Mr. Spencer's rights were in respect of retiring allowances if he had been allowed to retire on any grounds other than the misconduct for which he was dismissed, and I have obtained through the courtesy of the Civil Service Commission a description of these benefits and I annex them as Appendix 1 to this report. However, it is not necessary to evoke any further compassion for Mr. Spencer because he is no longer in this world.

One other aspect of his treatment was his so-called "surveillance" by the Royal Canadian Mounted Police. One thing is perfectly clear that from the time that Spencer revealed his identity to a very eminent reporter of the

Vancouver Sun and the fact who he was was published, he was, and I cannot find a better word, hounded perpetually by members of the press at all hours of the day and night, without any consideration for his personal wellbeing whatever. It is quite true that he brought this on himself, but in the early stages of it it was undoubtedly a serious detriment to his recovery. The Mounted Police kept in touch with him and indeed became for him persons to whom he could go in his troubles and from whom he could get assistance, and he got such assistance. As he expressed in his interview with Mr. Webster he was in some fear of attack by citizens who were more conscious of their loyalty to this country than he was, and he was, of course, in no physical condition to defend himself with any reasonable hope of success.

He was treated with great kindness and consideration by the Royal Canadian Mounted Police, and on one or two occasions was rescued from great pressure. Better places where he could stay with some proper care were found for him through their good offices. He had not been charged with any offence, and they in fact had no right to watch and beset him if he objected to it, but in point of fact his getting in touch with them was, for him, not a watching and besetting, but a refuge in time of trouble, and by their acts they proved to be friends to a poor broken-down sick man, of much greater value and worth than apparently any of his relations or other friends were. In consequence of this, and without any

knowledge on their part, sometime in January of this year he brought a letter to the Mounted Police office in Vancouver which begins "To whom it may concern". This letter is filed as Exhibit No. 28 and I think in fairness to the Royal Canadian Mounted Police it should be published and I attach it as Appendix 2 of this report. It was quite unsolicited, and is, I think, evidence of the fairness with which those in authority and those acting under them treated Spencer in his very great difficulties. Spencer as Sergeant Low said, was a complex character. To understand his very mixed motives and his lack of appreciation of his duty and obligation to Canada may explain his actions, but it does not condone them.

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APPENDIX I

Mr. Spencer reached sixty years of age some sixteen months prior to the date of his dismissal. Where an employee reaches sixty years of age he is eligible to retire on an annuity under the Public Service Superannuation Act. In these circumstances, the employee simply notifies his department that he wishes to retire and does not need to mention illness or any other such reason in support of his action. If retirement action had been effected, Mr. Spencer would have, pursuant to section 59(1) of the Civil Service Regulations, been eligible to receive retiring leave calculated at the rate of one week for each of his sixteen completed years of continuous employment. This would have meant that his department would have had the authority to grant him sixteen weeks' retiring leave. This retiring leave is paid at the salary being paid on the last day of active duty and the employee continues to contribute to the Public Service Superannuation Plan during the retiring leave period.

Section 59 (1) (a) of the Civil Service Regulations reads as follows:

"59.(1) A deputy head may grant to an employee who is about to cease to be employed in the civil service and who is a lay-off or will be eligible for an immediate annuity under the Public Service Superannuation Act on ceasing to be so employed

- (a) retiring leave for a period not in excess of twenty-six weeks calculated at the rate of one week for each completed year of continuous employment in the civil service minus any retiring leave or any period in respect of which a gratuity was previously granted to that employee in respect of that employment;"

As an alternative, Mr. Spencer could have elected to receive an immediate gratuity in lieu of retiring leave. In that case he would have been entitled to an immediate annuity commencing on the day following his last day of active duty and the gratuity would have represented the difference between the annuity and the salary payable during the retiring leave period. The exact salary which Mr. Spencer was receiving at the date of his separation has not been determined from the Post Office Department but if it were at the maximum of the range of Postal Clerk 2 (\$5215), the retiring leave would have been at the rate of \$100.34 per week or approximately \$1600 minus the superannuation annuity payable during the sixteen-week period involved.

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The Civil Service Act and Regulations make no provision for payment of unused sick leave credits on the termination of a civil servant's employment.

Retiring leave, where granted under section 59(1) of the Civil Service Regulations, is at the rate of one week per year of continuous employment as described above, in the case of an employee about to cease to be employed and who will be eligible for an immediate annuity under the Public Service Superannuation Act. Where an employee is dismissed by reason of misconduct, payment of an immediate annuity is precluded under the provisions of the Superannuation Act and, indirectly, the payment of retiring leave is precluded in view of the provisions of section 59(1) of the Civil Service Regulations. This situation obtains to the same extent and in the same manner whether dismissal is effected pursuant to section 50 or to section 60 of the Civil Service Act.

The Commission understands from discussion with the Public Service Superannuation Branch of the Comptroller of the Treasury that dismissal on grounds of misconduct also precludes continued contribution to the Public Service Group Service Medical Insurance Plan. In other words, it is only where an employee becomes an annuitant that he may contribute to the medical plan. Authoritative advice in this connection however, if needed, should be obtained from the Public Service Superannuation Branch.

Yours very truly,

(sgd) M.M. Maclean,
Director,
Pay and Standards Branch.

APPENDIX TWO

- TO WHOM IT MAY CONCERN -

When the first news releases were made early in May last year, about my contact with a Russian Embassy official, it was reported that the R.C.M.P. were grilling me when I undergone a major chest operation and was under Cobalt radiation treatment for cancer.

I emphatically deny that ~~any~~ any officers of the R.C.M.P. grilled me, or used any type of third degree methods to gather information about my contacts.

It was also reported that I was dying and was too sick to be brought to trial. Yes, I was very low at that time, having lost close to forty pounds in weight, which is quite normal for that type of operation plus the radiation treatment, but at no time was I close to death because of the magnificent work of the Doctors and Nurses in the Heather Pavilion and later in the cancer division of the Vancouver General Hospital.

The officers of the R.C.M.P. were more than co-operative with me when we discussed my actions, and at no time interfered with the routine of my treatment as prescribed by the Doctors.

If the least tired, or in need of pills or nourishment, I returned to bed, leaving unfinished business until a later date, sometimes a ~~few~~ few days or a week if necessary.

Because knowledge of medicine and treatment is only in its infancy, we have to depend on doctors and nurses who are too few. More and more must all people train themselves to take care of the sick and injured. To give first aid, and especially study what are good human relationships.

The officers who spoke to me would qualify as nurses. If they had more schooling, they could be doctors, and contrary to what we often see on the T.V. they did not grill, shout or get mad, but treated me as a human being whose first job is to get well, as I eventually will due to the care and attention given

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by the nurses, doctors and ~~many~~ many, many others, such as the social workers who arranged rest home care when I was able to leave the hospital, and those who taught me about diet, and bodily movements to compensate for the loss of a lung, that is, how to breathe correctly and make the one lung do the work of two.

To all , officers, doctors, everyone. THANK YOU

Sincerely

G. W. Spencer

Jan 15 th 1965