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"In the Field of Espionage, There's No Such Thing as Peacetime": The Official Secrets Act and the PICNIC Wiretapping Program

Abstract: *In 1951, the Canadian government created Privy Council Order 3486 (PC 3486) in order to engage in a covert phone-tapping program against individuals, organizations, and foreign governments (embassies) on Canadian soil. The program was codenamed "PICNIC" and was run by the Royal Canadian Mounted Police (RCMP), Canada's then security service, specifically out of the Special Branch. In consultation with the RCMP, the government decided to continue the phone tapping indefinitely, with the RCMP writing warrants instead of a judge. After 1953 covert wiretapping continued through Section 11 of Canada's Official Secrets Act. I argue that security can be understood and interpreted as an ideological construct. What did security mean in this period to the government and its intelligence services? Security was knowledge, in terms of safeguarding and hiding it and secretly collecting it. The article reveals the construction of state apparatus separated from the country's legislative branch and changes our understanding of surveillance in the Cold War. In terms of wiretapping, the RCMP was not "going rogue" in its targeting of individuals in the Cold War, they were following orders.*

Keywords: security, Five Eyes, intelligence, national security, surveillance, Cold War, law, legal history, Canada, NATO, United States, United Kingdom, Official Secrets Act, wiretapping, spying, espionage, counter-espionage, CSIS, RCMP, PICNIC

Résumé : *En 1951, le Conseil privé prit le décret 3486 (CP 3486) portant sur un programme secret d'écoutes téléphoniques de particuliers, d'organismes et de gouvernements étrangers (des ambassades) en sol canadien. Connu sous le nom de code « PICNIC », ce programme relevait de la Gendarmerie royale du Canada (GRC), service de sécurité du pays à l'époque, plus précisément de la Division spéciale. Après consultation de la GRC, le gouvernement décida de poursuivre indéfiniment les écoutes téléphoniques, les mandats étant rédigés par la GRC plutôt que par un juge. Après 1953, le branchement clandestin se poursuivit aux termes de l'article 11 de la Loi sur les secrets officiels du Canada. D'après l'auteur, la sécurité peut être vue comme une construction idéologique. Que voulait dire la sécurité à l'époque pour le gouvernement et ses services de renseignement? La sécurité, c'était le savoir; il fallait protéger l'information, la cacher et la recueillir*

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secrètement. L'article révèle la construction d'un appareil d'État dissocié du pouvoir législatif et transforme la vision jusqu'ici dominante de la surveillance pendant la Guerre froide. En ciblant ainsi des particuliers pendant la Guerre froide, la GRC ne « dérapait » pas; elle suivait des ordres.

Mots clés : sécurité, collectivité des cinq, renseignement, sécurité nationale, surveillance, Guerre froide, droit, histoire du droit, Canada, OTAN, États-Unis, Royaume-Uni, Loi sur les secrets officiels, branchement clandestin, espionnage, contre-espionnage, SCRS, GRC, PICNIC

On 21 March 1951, in the wake of the Korean crisis, the Liberal government under Prime Minister Louis St Laurent passed the Emergency Powers Act. This emergency legislation was different from the existing War Measures Act because it stipulated that it would not be used to suspend Canadians civil liberties.[1] Of the twenty-four Orders in Council introduced by the government from 1951 to 1954 during the life of the act, most were innocuous and concerned with creating a 5 cent coin or controls over agriculture and grain. Some were contentious: greater regulations over border control, screening of seamen in the Great Lakes, and allowing the United States to set up radio stations in Canada to conduct signals intelligence. Of those twenty-four orders, only one, Privy Council Order 3486 (PC 3486), introduced on 4 July 1951, was hidden from the public. In government documents, it was referred to as "the special Order," and it was "exempted from publication" but was concerned with "particular persons or classes of persons."[2] The opposition in the House of Commons learned about the secret order when the emergency powers had to be renewed in 1952. However, despite the brief uproar, PC 3486 seemed to disappear into obscurity.

My initial attempts to locate the order, after first reading about it in the 1952–3 House of Commons debates, were fruitless. University of Toronto law librarians directed me to the Privy Council Office (PCO), having never encountered such a situation. The PCO only yielded the order number and passed my query to Library and Archives Canada (LAC). The search there proved to be equally frustrating as archivist after archivist seemed baffled that "the special Order" was missing from the collection. They located a note in place of where the order should have been, stating that it was to be retained by Norman Robertson,

1 Emergency Powers Act, S.C. 1951, c. 5; War Measures Act, 1914, 5 Geo. V, c. 2.

2 "Emergency Powers Act: Order in Council," Privy Council-Law and Practice-Emergency Powers Legislation, 1953–1956 (PC-LPEPL), RG 2, vol. 61, file P-50–2(b), Library and Archives Canada (LAC)

the clerk of the Privy Council, in a "vault" somewhere in the government or the Privy Council. The archivists carried on a search for it that was nearly a year long, not knowing why it was hidden from the public. I filed an access-to-information request with the PCO for the order, and they refused to confirm or deny its existence. LAC archivists kept looking for the order in their collections and managed to find a file detailing that PC 3486 had created a covert wiretapping program called PICNIC. The discovery made national headlines, with the Canadian Press and the Canadian Broadcasting Corporation (CBC) reporting on it on 15 December 2016. The day after the story, the PCO changed their position and agreed to release PC 3486.[3]

In 1951, the Canadian government implemented PC 3486 to engage in a covert phone-tapping program against individuals, organizations, and foreign governments (embassies) on Canadian soil. The program, code-named "PICNIC," was run by the Royal Canadian Mounted Police (RCMP), out of the special branch that was responsible for counterintelligence. While this might not seem contentious in light of the prospect of war with the Soviet Union over Korea, when the emergency ended in 1953 the government, in consultation with the RCMP, decided to continue the phone tapping indefinitely with the RCMP commissioner writing warrants. The program's continuation was made possible by Section 11 of Canada's Official Secrets Act.[4] Knowledge of the program appears to have been restricted to the highest levels of government and the RCMP. There has been surprisingly little written by historians on the Official Secrets Act. Martin Friedland undertook the most in-depth study of the act for the McDonald Commission,

3 The search for this Order in Council began in February 2016 as part of a search for documents related to the Gouzenko affair. The Privy Council Office (PCO) directed me to LAC, but the LAC archivists became fairly certain that the order was never turned over to them and retained in a "vault" of some kind. My deepest thanks to Michael Dufrense whose tiresome and tenacious work on this file was invaluable. For the Canadian Press and Canadian Broadcasting Corporation stories, see Dave Seglins and Rachel Houlihan, "Federal Cabinet Secretly Approved Cold War Wiretaps on Anyone Deemed 'Subversive,' Historian Finds," *CBC News*, 15 December 2016, http://www.cbc.ca/news/investigates/surveillance-cold-war-picnic-1.3897071 (accessed 15 December 2016); Jim Bronskill, "Ottawa Approved Secret RCMP Phone-Tapping during Cold War: Historian," *Canadian Press*, http://www.theglobeandmail.com/news/national/historian-uncovers-secret-rcmp-phone-tapping-program-during-cold-war/article33332518/ (accessed 15 December 2016); Dave Seglins, "'Secret Order' Authorizing RCMP's Covert Cold War Wiretapping Program Released after 65 Years," *CBC News*, 16 January 2017, http://www.cbc.ca/news/politics/cold-war-wiretapping-secret-order-1.3933589 (accessed 16 January 2017.

4 Official Secrets Act, R.S.C. 1950, c. 46.

which investigated the actions of the RCMP on Quebec separatists and led to the creation of the Canadian Security Intelligence Service (CSIS) in 1984.[5] However, none of the studies that mention the act, including the McDonald Commission, were ever aware, or at liberty to say, that the act was secretly being used to justify surveillance.

RCMP surveillance of subversives dates back to the First World War, and while wiretapping in the Cold War has been discussed by scholars, the assumption was that the security services were breaking the law and doing it on a case-by-case basis and of their own accord.[6] These newly

5 M.L. Friedland, *National Security: The Legal Dimensions* (Hull: Canadian Government Publishing Centre, 1980); J.L. Granatstein and David Stafford, *Spy Wars: Espionage and Canada from Gouzenko to Glasnost* (Toronto: McClelland and Stewart, 1990); Amy Knight, *How the* Cold War *Began: The Gouzenko Affair and the Hunt for Soviet Spies* (Toronto: McClelland and Stewart, 2005); Mark Kristmanson, *Plateaus of Freedom: Nationality, Culture, and State Security in Canada, 1940–1960* (Don Mills, ON: Oxford University Press, 2003); J.L. Black and Andrew Donskov, *The Gouzenko Affair: Canada and the Beginnings of Cold War Counter-Espionage* (Manotick, ON: Penumbra Press, 2006); Reg Whitaker, Gregory Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press, 2012), ch. 7; Reg Whitaker and Gary Marcuse, *Cold War Canada: The Making of a National Insecurity State, 1945–57* (Toronto: University of Toronto Press, 1996); Reg Whitaker and Steve Hewitt, *Canada and the Cold War* (Toronto: James Lorimer, 2003); Jessica Wang, *American Science in an Age of Anxiety: Scientists, Anti-Communism and the Cold War* (Chapel Hill: University of North Carolina Press, 1999); Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists 1930–1960* (Toronto: University of Toronto Press, 2005), ch. 4; Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937–82* (Vancouver: UBC Press, 2008), ch. 3; Dominique Clément, "The Royal Commission on Espionage and the Spy Trials of 1946–9: A Case Study in Parliamentary Supremacy," *Journal of the Canadian Historical Association* 11 (2000): 151–72; Merrily Weisbord, *The Strangest Dream: Canadian Communists, the Spy Trials and the Cold War* (Toronto: Lester and Orpen Dennys, 1983).

6 On surveillance dating back to the First World War, see Gregory Kealey, "State Repression of Labour and the Left 1914–1920," *Canadian Historical Review* 73, no. 3 (1992): 281–314; for Royal Canadian Mounted Police (RCMP) and Cold War wiretapping, see Jeff Sallot, *Nobody Said No: The Real Story of How the RCMP Always Got Their Man* (Toronto: James Lorimer and Company, 1979). The McDonald Commission was aware that wiretapping was being done by the RCMP for subversion and counter-intelligence cases. To date, nothing has been publicly revealed demonstrating that the commission was aware of Privy Council Order 3486, 4 July 1951 (PC 3486) and the government's attempts to covertly permit RCMP wiretapping through the use of Section 11 of the Official Secrets Act other than the Solicitor General Warren Allmand testifying that he believed using Section 11 for such purposes was lawful. Canada, *Commission of Inquiry Regarding Certain Actions of the Royal Canadian Mounted Police*, Third Report (Ottawa: Minister of Supply Services Canada, August 1981), 104.

uncovered documents suggest that this was not the case. Using PICNIC as its focal point, this article sheds light on how counter-intelligence wiretapping surveillance was conducted during the Cold War, how the federal government's initial planning for a mass wiretapping program was developed, as well as on the secret discussions that took place about how to justify it. This was the start of mass surveillance – the kind revealed recently by leakers such as Edward Snowden. The program exposes how the creation of a mass surveillance infrastructure relied on secret laws and agreements outside the public realm and beyond the reach of Parliament and the judiciary. It exposes how a law like the Official Secrets Act, with which many public sector employees, lawyers, and academics were familiar, was secretly being used to justify mass surveillance for decades.

How do we understand and interpret the government's need to spy indefinitely on its citizens and other individuals as it saw fit? Recognizing how the government defined security can help us understand these actions. I argue that security can be understood and interpreted as an ideological construct. Like the state, security is not a thing per se. The state, as Phillip Abrams has argued, is not a tangible thing that someone can point to and identify. We see representatives of it manifested as police, or institutions, but secrecy is essential to it as it escapes detection as a "thing." The state, as an idea, is an exercise in legitimation of power. As Abrams states, "what is being legitimated is, we may assume, something which if seen directly and as itself would be illegitimate, an unacceptable domination. Why else all the legitimation – work?" Security, like the state, could be understood as a means of "legitimating the illegitimate," an ideology that needed to be constructed, communicated, and imposed.[7]

What did security in this period mean to the government and its intelligence services? Security was knowledge: collecting, safeguarding, and hiding it. As Friedrich Nietzsche stated, security and knowledge are intertwined; security is a "need for the familiar, the will to uncover

7 Phillip Abrams, "Notes on the Difficulty of Studying the State," *Journal of Historical Sociology* 1, no. 1 (1988): 76. See also Nikolas Rose and Peter Miller, "Political Power beyond the State: Problematics of Government," *British Journal of Sociology* 43, no. 2 (1992): 173–205; Mary Poovey, *Making a Social Body: British Cultural Formation, 1830–1864* (Chicago: University of Chicago Press, 1995), chs. 1, 2, 5, 6; Simon Gunn, "From Hegemony to Governmentality: Changing Conceptions of Power in Social History," *Journal of Social History* 39, no. 3 (1996): 705–20. For a similar argument involving the law as ideology, see Douglas Hay, "Property, Authority and the Criminal Law," in *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*, edited by Douglas Hay (London: Allen Lane/Penguin, 1975).

everything strange, unusual, and questionable."[8] Knowing was not the same as understanding. State actors were not interested in understanding their targets, just in knowing more about them. Ideology determined what the state saw as its targets. Authorities saw the threats they believed they knew were there. There were millions of potential threats. Covert wiretapping, otherwise considered illegitimate, became legitimate through exceptional laws such as PC 3486.[9] The discovery of this program reveals a widening gulf between the power and reach of the state versus the power and reach of Canada's Parliament and courts. The government was building the infrastructure to enable state security functions to operate in secret, complete with secret laws, programs, and archives that would be hidden from Parliament and the country's courts. Security, like the inner workings of the state, was tied to secrecy. The government needed to construct and control knowledge through secrecy. The Official Secrets Act became Canada's law for covertly gathering knowledge to ensure security in peacetime – this was the official secret of the Official Secrets Act.

DEFINING SECURITY

In September 1945, Igor Gouzenko defected from the Soviet Union to Canada, exposing a spy ring in Canada, the United States, and the United Kingdom. The resulting Kellock-Taschereau Commission investigated the suspected spies with extraordinary power at its disposal, including detaining suspects without charges and interrogating them without lawyers. In Canada, a Security Panel was created in 1946 consisting of representatives from the military, the RCMP, the Department of External Affairs, and the Privy Council. The panel was to advise government and coordinate intelligence policy. The RCMP was central and executed programs such as security screening of public employees and immigrants. The Security Panel issued a manual that detailed the procedures for classifying documents and ensuring that all federal departments understood what security was in the post-war world. In the opening paragraph, the manual stipulated that, for government

8 Friedrich Nietzsche, *The Gay Science, with a Prelude in German Rhymes and an Appendix of Songs*, edited by Bernard Williams (Cambridge: Cambridge University Press, 2003; originally published 1882), 214.

9 For more on the "state of exception," see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, translated by Daniel Heller-Roazen (Stanford: Stanford University Press, 1995); Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005).

departments, "security means the taking of all measures likely to prevent or impede the transmission of information to unauthorized persons." Security was about controlling information, keeping it secret, and safeguarding it. The manual detailed how documents were to be classified, pointed out that telephone conversations were not secure for discussing classified information, and included an oath of allegiance that had to be taken by officers, directors, clerks, and full-time employees. For anyone who did not have the time or ability to study security, they were instructed to have faith and trust in the policies that the experts had created. People were required to believe in security as their superiors understood it – as being tied to knowledge and, in their case, to ensuring that important information stayed secret.[10]

The Official Secrets Act was one of the principle means of establishing security as the government defined it. The act, which was created in 1939, was identical to Britain's 1911 and 1920 acts of the same name. From 1950 to 1954, the act underwent a series of amendments, and historians have been at a loss to understand the rationale for these amendments and additions to other sections of the Criminal Code.[11] The Emergency Powers Act and PC 3486 can now provide some insight into why some of those changes may have occurred.

"WHAT ALL GOVERNMENTS OF THE NATO COUNTRIES ARE DOING"

Several significant government surveillance programs began in the 1950s. The National Film Board, federal employees, and homosexuals were watched for communist sympathies or vulnerability to blackmail by Soviet agents. The RCMP launched programs such as FEATHERBED and PROFUNC. FEATHERBED investigated diplomats and high-ranking

10 Security Panel, "Booklet on Security," February 1949, RG 25, vol. 3323, file 11022–40, pt. 1, LAC.

11 Official Secrets Act, 1911, 1 & 2 Geo. V, c. 28; 1920, 10 & 11 Geo. V, c. 75 (UK); S.C. 1939, c. 49. Sabotage was added to the Criminal Code, S.C. 1953–4, c. 51, and espionage was also added as a form of treason. The treason offense was punishable by death or life in prison if it was committed during war and fourteen years in prison if committed during peacetime. Amendment to the Official Secret Act, s. 3; Criminal Code, Sabotage Offence, S.C. 1951, c. 47, s. 18; Espionage as a Form of Treason, S.C. 1954–5, c. 51. See Barry Wright, Susan Binnie, and Eric Tucker, *Canadian State Trials*, vol. 4: *Security, Dissent and the Limits of Toleration in War and Peace* (Toronto: University of Toronto Press, 2015) 38, n. 51; Friedland, *National Security*; see also the Mackenzie Commission, which found repetition and irregularities in the act. *Report of the Royal Commission on Security* (Ottawa: Queen's Printer, 1969).

members of the government for ties to communism, including some well-known individuals such as Hume Wrong, George Ignatieff, and Saul Rae. Ultimately, not a single communist spy was uncovered, and the program was disbanded in the 1980s. FEATHERBED was not without serious ramifications for those investigated, especially when Canadian officials shared information with the Federal Bureau of Investigation (FBI). Canadian diplomat, Herbert Norman, for example, committed suicide to avoid the FBI's relentless pursuit. Operation PROFUNC was an RCMP plan for interning tens of thousands of communists, or perceived sympathizers, and their families in the event of war with the Soviet Union.[12]

The legality of wiretapping in this period was not clear. Interfering or tampering with phone lines (which were often the property of phone companies) to intercept communications became a misdemeanour when the Bell Telephone Company was incorporated in 1880. The boundaries between law enforcement and privacy were not well established when it came to wiretapping. The Department of Justice notified the RCMP in 1936 that it believed the courts would accept wiretap evidence even if obtained illegally; though exposing a wiretap operation risked exposing law enforcement investigative methods, so the department recommended using it mainly as an investigative aid. The 1970s saw the first sanctions against the police's use of bugs and wiretaps. The power was contained in Section 16 of the Official Secrets Act, which was a new addition in 1974 and part of the Protection of Privacy Act. The addition, the government claimed, was to make it clear that wiretapping was legal in certain instances and illegal in others. The provinces had their own laws. In Ontario, there was nothing that prevented wiretapping, although wiretapping was not a kind of search that had ever been dreamt of when search warrant sections were created. Manitoba and Alberta expressly forbade wiretapping, although in Alberta it did not apply everywhere. In Edmonton, the city owned the phone lines, and the city bylaws permitted wiretapping with a judicial warrant. It is fair to say that a patchwork of laws governed wiretapping and other electronic forms of eavesdropping in this period.[13]

In spite of the Department of Justice's advice to the RCMP in 1936, it was not always clear that the courts would accept wiretap evidence.

12 For more on these programs, see Whitaker, Kealey, and Parnaby, *Secret Service*, part 3; Gary Kinsmen, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010).

13 Friedland, *National Security*, 163, n. 2; Sallot, *Nobody Said No*, 142–5; Act Incorporating the Bell Telephone Company of Canada, S.C. 1880, c. 67, s. 25; Protection of Privacy Act, S.C. 1973–4, c. 50.

For instance, in the case of *Re Bell Telephone Company of Canada* in 1947 police obtained a search warrant for wiretapping and Chief Justice McRuer subsequently quashed it, stating that the purpose of the warrant was to seize things relevant to the case and not "to secure an opportunity of making observations in respect of the use of things, and thereby obtain evidence."[14] Historians who have dealt with the subject of RCMP wiretapping or bugging during the Cold War have previously assumed that, even if procedures and rules were not consistent across the country, the RCMP was deliberately breaking what laws were in place by planting bugs and using wiretaps. For instance, in 1936, Colonel G.L. Jennings, the RCMP's director of criminal investigations, made his commanding officers aware of the laws around wiretapping but told them that sometimes their work may require them to use wiretaps. The discovery of PC 3486 and the PICNIC program reveals that the RCMP were being ordered by the government to engage in wiretapping and that the government had created a secret legality to enable them to do it, at least from 1951 onward.

The PICNIC wiretapping program began during the emergency situation that was precipitated by the Korean civil war. At the end of the First World War, Japan lost control of the Korean peninsula. The Soviets occupied the northern portion of the peninsula, and the United States took control of the south. The communist-supported northern forces invaded the south, triggering a civil war. They were almost successful in taking control of all of Korea until the United Nations troops, including Canadians, began pushing back early in 1951. At home, the government passed the Emergency Powers Act on 21 March 1951. A total of twenty-four Orders in Council were introduced under the authority of the act. The government's rationale for passing the act was to avoid the invocation of the War Measures Act because of the disruption it would cause to "fundamental liberties" as long as the efforts to avert war were continuing.[15] The act had to be renewed each year. The majority of the orders concerned government controls over the defence economy and agriculture and the introduction of security screening measures. Some of these measures were to placate the United States, which wanted greater security screening and permission to operate radio bases on Canadian soil.[16]

On 4 July 1951, the government also enacted PC 3486, but while the creation of the order was public, its contents were not revealed to

14 Friedland, *National Security*, 77–82.
15 Emergency Powers Act.
16 Whitaker, Kealey, and Parnaby, *Secret Service*, 201–4.

the press or to Parliament. The preceding order – PC 3485 – gave the government the power to prevent the publication of orders. PC 3485 amended the Regulations Act of 1950, exempting the publication of orders concerning grain storage, quotas, and orders "with respect to persons or classes of persons where the publication of such orders may be prejudicial to security or defence." A copy of such an order was to be filed with the clerk of the Privy Council "and shall be kept in a register in his office."[17] Given that PC 3485 was created the same day as PC 3486, it seems clear that it was enacted to legally justify keeping PC 3486 secret.

PC 3486 authorized a cover wiretapping program dubbed PICNIC. The PICNIC program's surveillance was aimed at Canadians and residents of Canada who were suspected of disloyalty, especially residents from Eastern Bloc countries, including embassy staff. Section 2 of the order stipulated that the minister of justice would write wiretapping orders, and these would be carried out by the RCMP with the help of Canadian phone companies such as the Bell Telephone Company of Canada (Bell Canada). Section 5 made it an offence to reveal an order made under PC 3486 as well as anything done by a person carrying out a wiretapping order or by a phone company doing the same. Section 6 stated that:

> (1) Nothing in any Act of the Parliament of Canada or of a legislature or in any enactment made thereunder or in any other law shall be deemed to limit or affect the operation of this Order.
>
> (2) Notwithstanding any Act of the Parliament of Canada or of a legislature or any enactment made thereunder or any other law, no person is liable in civil or criminal proceedings by reason only that he complies with this Order or an order made under this Order.

The order gave individuals carrying out wiretapping orders, such as law enforcement agencies and phone companies, considerable power. Not only did the government declare that no law in Canada could interfere with PC 3486 (which is unclear because an order cannot overrule a federal statute), but anyone carrying it out was exempt from any criminal or civil prosecution. Any law, criminal or otherwise, could be violated if it was done to carry out wiretapping. Refusal was also criminalized, meaning someone could have been compelled to violate

17 Regulations Act, S.C. 1950, c. 50; Regulations Act – Exempting Certain Orders from Operation of the Act, Privy Council Order 3485, SOR/51 303, 4 July 1951.

a law to carry out a wiretapping order under PC 3486.[18] PC 3486 demonstrated the importance Canada placed on covertly collecting knowledge, and it shows the growing separation between the state and Parliament. PC 3486 was a secret law to the public, but not to those state officials involved in its creation or to those individuals responsible for carrying it out. It allowed individuals to act with absolute impunity, outside of Parliament's knowledge. PC 3486 empowered the PCO to keep its security-related orders secret for at least ten years and, in so doing, authorized the creation of a secret archive of information collected through PICNIC. It was a secret exercise in using law to legitimate an illegitimate activity, thereby transforming it into a legal and necessary security measure. While this may be unsurprising in a moment of crisis or when faced with a possible war with the Soviet Union over Korea, a plan was also being constructed to ensure PC 3486 would secretly continue beyond the end of the emergency.

CULTIVATING THE GARDEN

Peter Michael Dwyer was a military intelligence, Section 6, liaison officer in Washington before he came to Canada in 1949 to work at the Communications Branch of the National Research Council, the precursor to Canada's Communications Security Establishment, which was responsible for foreign signals intelligence. In 1951, he moved to the PCO and soon became the secretary of the Security Panel.[19] He advised the government on security matters, and he played a lead role in normalizing the secret order. Dwyer wrote to Norman Roberston, the clerk of the Privy Council on 28 August 1953 informing him that the present powers of the RCMP included "clandestine tapping of private telephones," which was contained in an Order in Council that would soon expire with the Emergency Powers Act. He stated that given the truce in Korea, the "'raison d'etre' of the Emergency Powers Act would cease and so would the authority to tap telephones." After discussing the matter with the RCMP's Special Branch, which was responsible for counter-espionage, Dwyer claimed phone tapping gave the authorities an invaluable source of information "vital to the security of Canada." "Distasteful" methods, he said, were sometimes required to counter equally distasteful activities.[20]

18 PC 3486.
19 Kristmanson, *Plateaus of Freedom*, 100–15.
20 Peter Dwyer to Paul Pelletier, 31 March 1954, PC-LPEPI, LAC. Peter Dwyer to Norman Robertson, 28 August 1953, PC-LPEPI, LAC.

He suggested several amendments to broaden the Official Secrets Act to enable it to function as a covert law to both criminalize the release of information and to provide the government with authority to secretly gather it. Section 7 of the act authorized the minister of justice to have transcripts of telegrams produced for his attention from either within or outside of Canada as well as any conversation concerning the leaking of information vital to Canada's security that occurred from a prohibited place such as a government office or factory that the government considered important to Canada's security. Elmer Driedger of the Department of Justice suggested changing "telegraph" to "telecommunications," which would broaden the minister's powers, and Dwyer ultimately agreed that "electromagnetic communication or device," which highlighted the scientific nature of the technology, was better. The government claimed the need to modernize the act, which would continue the authority to tap phones "without drawing direct attention to our purpose." "Classified Information" should replace references to specific kinds of secret information that the government wanted to protect in order to broaden the act's remit. Similarly, the meaning of "prohibited place" in the act – that is, where the offending conversation took place – should be expanded, by removing specific locations, to infer anywhere by using the phrase "any places containing classified information."[21]

Paul Pelletier, assistant secretary to the Cabinet, wrote to Justice Minister Stuart Garson on 25 November 1953 about the proposed amendments to the Official Secrets Act, particularly Section 7. The goal, he thought, was to prevent the purpose of the amendments from "becoming common knowledge." The most "effective smoke-screen," he claimed, was to introduce a series of amendments that would appear necessary and would not be contentious. The real goal of wiretapping phones would be "more or less successfully beclouded" by many changes to the Criminal Code. One of those changes was adding espionage to the treason section of the code as well as changing the definition of "prohibited places" in the Official Secrets Act. There would be two penalties for espionage in the treason section, one for a peacetime offence (fourteen years) and one for a wartime offence (life in prison or death). The changes would give the government the excuse to open up the Official Secrets Act to insert what it wanted to add. This was "the best smoke-screen," Pelletier stated. He warned, however, that it might still be possible for someone to one day

21 Peter Dwyer to Norman Robertson, 19 October 1953, PC-LPEPL, LAC; Paul Pelletier to Stuart Garson, 7 December 1953, PC-LPEPL, LAC.

"ferret out the real purpose" of amending the Official Secrets Act and the "true nature of the secret Order."[22]

A ten-page draft speech was prepared for the minister to make in the House of Commons, complete with a lengthy history of treason dating back to 1351 and Edward III of England. Following the long-winded, convoluted discussion on treason, the minister was also to mention the "moderate" changes to Section 7 of the act that would allow for telephone wiretapping indefinitely. Pelletier sent the draft to Prime Minister St Laurent noting that the statement to be made in the House "has purposely been made long, rather involved and to some extent repetitive." He noted that this was to ensure that the treason discussion and need to modernize the act would "help to get the true purpose of the amendment to section 7 'lost in the shuffle.'" The secretary to the Cabinet, R.B. Bryce, thought that the opposition and the public would focus on the expansion of treason because it was a capital offence so that the technical details of Section 7 would likely pass unnoticed. The final draft of the bill was ready to go, but, first, the government decided it would be wise to assemble a special cabinet committee meeting to discuss the secret order and the plans about to be unveiled in the House of Commons.[23]

The attendees of the special meeting are not precisely known, but in a memo for Bryce, Pelletier suggested both the discussion topics and the attendees: the prime minister, Justice Minister Garson, Secretary of State Jack Pickersgill, Secretary of State for External Affairs Lester Pearson, Minister of Finance Douglas Abbott, and Minister of Citizenship and Immigration Walter Harris. The first order of business was to ascertain the usefulness of the order. RCMP Commissioner Leonard Nicholson was away, but Superintendent J.R. Lemieux, who headed up the Special Branch, was able to provide the appropriate information. Pelletier, Bryce, and Dwyer were also able to attend. Pelletier informed St Laurent in a memo that Garson had issued sixty-three wiretap orders under the authority of the secret order; the minister eventually cancelled fifteen. All were served to Bell Canada except for five that were issued to the British Columbia phone company. A "certain" number of the orders were connected to embassies and other missions of "Iron Curtain" countries, but other orders related to the headquarters of "certain unfriendly organisations." The largest number, however, were issued against "individuals who are known or

22 Ibid.

23 Paul Pelletier to Louis St Laurent, 26 January 1954, PC-LPEPL, LAC. R.B. Bryce to Paul Pelletier, 18 March 1954, PC-LPEPL, LAC.

strongly suspected of being disloyal." Pelletier wanted Lemieux to prepare a report showing the order's usefulness and also asked Bryce to consider amending the Official Secrets Act so that it could apply extraterritorially so that any communication could be intercepted that could harm not just Canada but also any North Atlantic Treaty Organization (NATO) member or ally. The Cabinet subcommittee meeting was held on 25 March 1954. We do not know what transpired, but, evidently, it was decided to allow the Emergency Powers Act to expire as planned on 31 May 1954 and to defer a decision on the secret order.[24]

Pelletier asked Dwyer to give his thoughts on tapping telephones so that these could be conveyed to the prime minister who was having reservations about the program. Dwyer wrote that while the activity is "distasteful," the security service is forced to do it because its opponents are "ruthless and amoral." He claimed that if major intelligence were discovered about Soviet intentions, no one would debate where the intelligence came from just as no one cared about Gouzenko defecting if the intelligence he provided was good. Tapping a telephone, he stated, was "a protective measure," and even though it was an invasion of privacy, it was necessary based on the threat to security. He claimed that because the power is distasteful and also an invasion of privacy, the attitude around surveillance has been that such actions should only occur in wartime. However, countermeasures, he argued, could not wait for war, "they must be laboriously built up, developed and maintained over a long period of time before they become effective. Il faut cultiver notre jardin – even if it is a rather dirty one." He argued that national security risks were not limited to wartime because he reminded his colleagues that "in the field of espionage there is no such thing as peace time." Counter-espionage should not be equated with things like internment, which was an emergency measure. He considered phone tapping a standard measure now and pointed out that both the United Kingdom and United States had "enabling legislation. In the U.K. it is obscured in the Post Office Act, in the U.S.A. it is done by Presidential directive." He pointed out that in both countries safeguards existed to prevent abuse. He gave examples from the Second World War about how phone tapping in the United Kingdom potentially saved the lives of a whole division. He did remind the government that abuses had occurred in the past but that the situation Canada found itself in was not a new or exceptional one. He thought,

24 Paul Pelletier, "Memorandum for Mr. Bryce: Special Cabinet Committee to consider Special Order in Council," 29 March 1954, PC-LPEPL, LAC.

instead, that the government should consider that in using these distasteful measures, it was at least "keeping quite good company."[25]

This remarkable discussion between government officials and Cabinet members reveals important insights into how security was interpreted and understood. Collecting information and knowing as much as possible was interpreted by leading government members and security authorities as being integral to their understanding of security. Security, as an ideological construct based on knowing, meant that the government could legitimize what would normally be considered illegitimate behaviour. Members of the young security establishment freely acknowledged that activities such as phone tapping were "distasteful" and "dirty" methods, but they felt they were forced into such activities by an enemy that wanted to know as much as possible about them and would also use "ruthless" methods. Those that did not completely believe in such an interpretation of security had to be convinced. Reports had to be prepared proving that "useful" knowledge was being acquired and that this was protecting the country. The prime minister had to be assured that this was a legitimate activity and a necessary one. The discussion also reveals how the law and the legislative process were understood by the government to be tools of security. Amendments were being used as "smoke-screens" to obscure the true intentions of the legislation from a public that had not yet accepted the government's understanding of security. "Turning" the public, to borrow a phrase from the intelligence world, to view such activities as normal and legitimate would take time. Canada's allies were already using their existing laws and legal options to do their own surveillance unbeknownst to their citizens.

What is perhaps most troubling is how the targets were ascertained during the initial phase of the program. While the gaze on the Soviets in Canada was perhaps unsurprising, the program also included targeting organizations, presumably the Communist Party and front organizations, but the majority were against individuals known, at least by the

25 Peter Dwyer to Paul Pelletier, 31 March 1954, PC-LPEPL, LAC. To date, there is little research on the early history of the construction of mass surveillance infrastructure and programs in the United States and the United Kingdom, presumably because of access to primary sources. Dwyer's reference to the Post Office Act may be regarding s. 17, which stipulated that if any postal packet was sent in contravention of the act, it could be detained, opened, and sent on its way. A postal packet included a telegram. Post Office Act, 1908, 8 Edward VII, c. 48, s. 17. The British Post Office was responsible for the country's telecommunications. When the PCO in Canada contemplated how to continue wiretapping after PC 3486, Dwyer claimed that a telegram could also include a phone conversation.

government, to be disloyal or, even more troubling, people suspected of being disloyal. What constituted disloyalty in the eyes of the government was never articulated. Given what historians know about the scale of other security programs during the Cold War, the net would surely be cast wide, once the program was extended beyond the emergency phase.

THE OFFICIAL SECRET OF THE OFFICIAL SECRETS ACT

At the same time that the government was secretly planning to continue PC 3486, they were vigorously trying to defend the Emergency Powers Act in the House of Commons and trying to discuss PC 3486 only in vague terms. Opposition members grudgingly accepted PC 3486 when it was created because the government claimed it was necessary for national security, but, by 1953, they began seriously opposing the government's power to create these Orders in Council and were unaware of the government's plan to continue PC 3486 when the emergency ended. Having already extended the Emergency Powers Act once in 1952, the government introduced a bill in March 1953 to extend the powers of the act to 31 May 1954. The opposition became forceful in demanding answers: why did the government want to keep renewing the Emergency Powers Act? The opposition devoted much of their offensive to questioning the need for the Emergency Powers Act. They were careful not to go into details on PC 3486 or to press the government for such details, trusting that the secret order was for "security" as the government claimed, but they questioned the authority of the government to keep orders secret and to use the Emergency Powers Act. George Drew, the leader of the Progressive Conservatives, the official opposition, stated that he "did not believe that it should be open to the government of this country to carry on any activities the nature of which members of Parliament are not aware of . . . if we remain silent at a time like this . . . then we abdicate our responsibilities."[26]

During this session, Prime Minister St Laurent elaborated on the secret order. He told the House of Commons that it was a measure that concerned the combined security of Canada and its NATO partners and that it must continue to ensure that security. The prime minister offered to show the opposition party leaders the order, but he did not

26 *House of Commons Debates*, 21st Parliament, 7th Session, vol. 1–3 (1953), 1694, 1705–6, 2276–7, 2310, 2320, 2329–30, 3232–8.

think they would want to see it. He elaborated on its contents, saying "It's an Order which is part of what we are doing with our associates for the common defence without which there would have been a gap in arrangements for their security as well as our own." He claimed that it allowed Canada to do "what all governments of the NATO countries are doing and we have been doing it to their satisfaction and our own." He told the House that the order must continue or Canada would be accused of being unable to meet its NATO commitments. St Laurent was blunt in arguing that if he was in government and had a choice in the matter that he would "prefer not to see it," though he did state that he had told the official opposition leader what the order dealt with but did not get into specifics. He added that it was "unfortunate to live in a world where these things have to be done." St Laurent was a lawyer, and his House of Commons statements indicate that he was pulled in two directions, trying to balance the legitimacy of the program with the presumed needs of national security.[27]

In Jack Pickersgill's biography of St Laurent, he provides another possible rationale for keeping the program secret. In 1951, St Laurent outlined what the government was doing to protect the security of its institutions by using a "homely example." He said that "it would not be in the interests of security to describe too particularly the safeguards we are attempting to set up, just as trappers do not try to make their traps too obvious when they are placing them in the paths that game sometimes follow."[28] The wiretapping program was created in 1951 and was targeted at those "suspected" of disloyalty, suggesting that the government may have also interpreted this program as a "defensive" measure aimed, to borrow from St Laurent, at a "trapping game" – that is, individuals whose politics fell afoul of the government, such as communists. Despite his legal training and possible concerns about the legality of the program, his concern about security and communism prevailed. Drew was concerned that if the Emergency Powers Act was continued, more orders like the secret order could be created. Still, the government extended the act but agreed to not continue it beyond 31 May 1954.[29] The wiretapping program pitted the interests of the state against the legislative branch of government. The public

27 *House of Commons Debates*, 21st Parliament, 7th Session, vol. 1–3 (1953), 1694, 1705–6, 2276–7, 2310, 2320, 2329–30, 3232–8.

28 J.W. Pickersgill, *My Years with Louis St Laurent: A Political Memoir* (Toronto: University of Toronto Press, 1975), 148.

29 Canadian Press, "Emergency Powers Extended for Another Year by House," *Ottawa Citizen*, 27 March 1953; *House of Commons Debates*, 21st Parliament, 7th Session, vol. 4 (1953), 3315–19.

legislative branch was not privy to the secret laws, programs, and infrastructure being created in service of the state. These needs dominated, needed to be secret, and were of central concern to the government, even if it meant having to consider deceiving Parliament. The interests of the state, as an instrument of governance, were what carried the day, which, in this case, was security.

While these debates occurred publicly, the government continued to covertly explore how to continue wiretapping when the Emergency Powers Act ended. The prospects of further amendments to the Official Secrets Act were likely rejected at the special Cabinet meeting that was held on 25 March, since amendments to Section 7 did not occur. The government did add espionage to the treason section of the Criminal Code and added the broad category of "prohibited place" as a place where the Official Secrets Act could also apply. Other changes occurred in 1950 before PC 3486 was created and included having the Official Secrets Act apply in Commonwealth countries and "associated states," meaning the United States. This extraterritorial application was done to appease Canada's Cold War allies and was in keeping with PC 1860, which had been implemented during the Second World War, giving the act an extraterritorial application. Sabotage was also entered into the Criminal Code after the creation of PC 3486. Historians have thus far been unable to determine why these additions were made to the act because it created overlap in the code. While the government and security services wanted to continue PC 3486 beyond the end of the emergency, it is unclear if they also wanted to continue the penalties that PC 3486 contained for revealing wiretapping orders. It is possible that some of these additions to the Criminal Code were made with the goal of criminalizing actions of revealing wiretapping orders or of interfering with them.[30]

The government and security service explored other avenues for continuing phone tapping. Lemieux, the head of the RCMP Special Branch, wrote to Dwyer on 5 April 1954 about the authority for continuing PICNIC. He recounted the events that had led to the creation of the special order with the phone companies in 1950, stating that they would only carry out the program if they had a letter of assurance from the federal government, and, in fact, a letter was drafted by Bell Canada. Lester Pearson was responsible for the file, but, for some

30 Wright, Binnie, and Tucker, *Canadian State Trials*, 38, n. 51; Official Secrets Act; Minister of Justice, "Memorandum for Cabinet," 10 September 1951, BAN 2000–01038–5, box 22, file 162000–7, LAC.

unknown reason, Pearson and Garson did not sign the letter provided by Bell Canada, and, thus, the government had had to create PC 3486 in 1951 to carry out the phone taps. The system had been "preserved" since then and was of "the greatest value," Lemieux stated, and he claimed that a new letter was likely needed for the phone companies to continue the taps. The RCMP drafted such a letter for the prime minister. In the letter, the prime minister reminded Bell Canada of the agreement established in 1949–50 and the purpose of PC 3486 and claimed that the situation remained unchanged and that the surveillance was "an important measure of national security." St Laurent would give his assurance that the matter would not be made public and asked Bell Canada to do the same. Given that the operation continued beyond the end of the Emergency Powers Act, we can only assume a letter was sent.

While the matter with Bell Canada seemed an easier one to make given the previous agreement between the two parties, other companies had to be brought on board to create a wide phone surveillance network. Bryce and Pelletier considered using Section 382 of the Railway Act, which authorized government control of phone and telegraph lines. Dwyer was in favour and discussed the matter with Inspector Terry Guernsey of the RCMP. The idea was to use "civil defence" as a cover for the creation of a surveillance network. Dwyer produced a contract for the construction of a "Civil Defence Attack Warning System" that was already in place with Bell Canada. This civil defence network could form part of the "cover plan" for continuing the surveillance and expanding it with other phone companies along with using the Railway Act to justify it. However, the problems with using the Railway Act to justify taking control of the phone lines to create this system posed problems, as Pelletier pointed out to Garson on 25 May 1954. The main problem was that an Order in Council was required to use it. Pelletier felt that the majority of the people involved, including the prime minister, still favoured using the Official Secrets Act, but they now considered Section 11 of the act to be the best option. Section 11 enabled a justice of the peace to issue a search warrant and to seize any "evidence" that indicated that an offence under the act had been committed or was about to be committed.[31]

31 Railway Act, R.S.C. 1952, c. 234, s. 382; J.R. Lemieux to Peter Dwyer, 5 April 1954, PC-LPEPL, LAC; "Draft: St Laurent to Phone Companies," PC-LPEPL, LAC; R.B. Bryce to Paul Pelletier, "Re: Cover Plans for Use of Section 382," 29 April 1954, PC-LPEPL, LAC; Peter Dwyer to R.B. Bryce, 20 April 1954, PC-LPEPL, LAC; Paul Pelletier to Stuart Garson, 25 May 1954, PC-LPEPL, LAC.

With the power to monitor conversations set to expire, Pelletier wrote to Nicholson about the steps required to continue with the special order after it expired. He stated that it was Inspector Guernsey who originally mentioned using Section 11 of the Official Secrets Act and that all individuals involved in the planning were now in agreement that this was the best option, with the exception of Bell Canada. Bell's legal advisor, Norman Munnoch, thought that the Railway Act was better suited to this activity rather than having warrants issued under Section 11. On 1 June 1954, the ministers, along with Bell Canada representatives and the RCMP, were to have a meeting in Ottawa "for the purpose of thrashing out" all the points about continuing the program. In the meantime, Garson wanted Nicholson to start issuing warrants in order to continue the program. The search warrants could be issued by Nicholson and other service members whom all "happen to be Justices of the Peace."

In 1954, the RCMP had the power to be considered justices of the peace under Section 12 of the Royal Mounted Police Act. Subsection 2 of the Official Secrets Act also gave anyone in the RCMP, of at least the rank of superintendent, the power to issue these warrants in the case of an emergency. Determining whether a situation was an emergency likely fell to the superintendent or commissioner issuing the warrant. The warrants were not supposed to be served until the details were finalized with Bell Canada and served as a backup plan should talks with Bell not go well. They would be served whether Bell agreed or not. The Department of Justice believed that one warrant was required to cover "all the organisations and individuals, in any given area, whose telephone communications are to be monitored." It was easier and faster for all parties involved, although separate warrants might be better at a later date since some could be cancelled if they were written individually. "One warrant per area," Pelletier wrote, would be "sufficient for now." Garson discussed the matter with the prime minister, who agreed "in the course of action we propose to follow."[32]

Leading members of government, from the prime minister to Cabinet members in top portfolios in the government, Privy Council staff, and the security services, were all in agreement that monitoring the conversation of Canadians and foreign government representatives in embassies and in suspect organizations, essentially anyone deemed disloyal or subversive, would secretly continue. Pelletier notified A.J.

32 Paul Pelletier to Leonard Nicholson," 27 May 1954, PC-LPEPL, LAC. For RCMP power as justices, see Royal Mounted Police Act, R.S.C. 1952, c. 241, s. 12; Official Secrets Act, s. 11, ss. 2.

McLeod, director of the Criminal Law section of the Department of Justice, that drafts of a new Order in Council to allow the government to take control of the telephone lines by way of the Railway Act were readied, although Pelletier hoped it would not come to that. The drafts focused heavily on "defence" so as to deter suspicion that the government wanted access to the lines for its phone surveillance network.[33]

On 16 June 1954, Frederick Varcoe, deputy attorney general, wrote to Garson and Munnoch about the legality of using Section 11 of the Official Secrets Act to issue warrants for wiretapping. Varcoe claimed the act was designed to be broad enough to allow authorities to seize evidence with a warrant if an offence has either been committed or is about to be committed. It was clear to him that the wording of Section 11 was meant to cover anything being able to be seized, including communications, and that it also allowed for the seizure of "anything that is evidence under the Act," which he stated "of course would include oral communications."[34] On 11 June 1954, Garson and Varcoe met with Bell Canada's president Thomas Eadie and the company's counsel Munnoch in Montreal. There they discussed the best way to continue PC 3486. Bell Canada had maintained that the Railway Act was better suited to wiretapping, while the government preferred Section 11. Pelletier stated that "the monitoring of subversive telephone conversations is obviously within the spirit and intent of the Official Secrets Act." With the debate hashed out at the meeting, Bell Canada agreed to continue the program with warrants issued under Section 11, provided the following conditions were met: (1) the RCMP continue to pay rent on the monitoring stations as it was currently doing; (2) warrants are to be issued from Ottawa only by the commissioner or, in his absence, the deputy commissioner; (3) all warrants are to be sent to the assistant to the president of Bell Canada; (4) the deputy minister of justice is to forward his assessment of the legality of the operation; and (5) RCMP officers are not to tell local or provincial police about this arrangement for fear of other services flooding Bell Canada with requests. Pelletier confirmed that the government had assented to these conditions. The warrants that the RCMP had written to replace the ministerial orders under PC 3486 would be served "in a few days," and Pelletier noted that, in addition to Bell, they would be served to the British Columbia Telephone Company, which notified the government "some time ago that it would have no objection whatever to the course of action we propose to follow."[35]

33 Paul Pelletier to A.J. MacLeod," 10 June 1954, PC-LPEPL, LAC.
34 Frederick P. Varcoe to Stuart Garson, 16 June 1954, PC-LPEPL, LAC.
35 Paul Pelletier, "Memorandum for File: Monitoring of Subversive Conversations," 18 June 1954, PC-LPEPL, LAC.

As far as can be determined, the program did not abruptly halt in the days before the warrants were served, and this Privy Council file covered the years between 1953 and 1956, although the PICNIC program is never mentioned again following Bell Canada's acceptance of the program. There is evidence that it continued for some time, though it is unknown if it kept the same program name. In 1973, Solicitor General Warren Allmand claimed during the debates on the Protection of Privacy Act that the government's proposed Section 16 to the Official Secrets Act to permit wiretapping was narrower than Section 11, which was the section that was currently used. If one was not aware of the government's wiretapping program, one would have thought Allmand likely had made a mistake since Section 11 of the Official Secrets Act was a search warrant section, when in fact he inadvertently revealed its true purpose, at least to those in the know. For the government, the Official Secrets Act seemed the logical statute for secretly justifying wiretapping in the 1970s and beyond.[36]

Throughout these secret discussions, the government was particularly concerned about establishing and creating the legality necessary to carry out the program. It was not only the government that was worried about the legality of wiretapping, however, but large numbers of people were also concerned as well as its corporate partners such as Bell Canada. We can only hypothesize what the Supreme Court of Canada would have decided had the court been compelled to decide on the issue. The secrecy of the program may likely have been for several reasons. While privacy over the phone line was not a legal right, it was a concern for the government, and tampering with phone lines was an offence in some cases. Dwyer mentions several times in his memos how spying was "distasteful," and St Laurent was conflicted by it even if his national security concerns did overrule his legal training. Secrecy was required to "trap" suspected subversives. In addition, the government may have also wanted to circumvent the courts in order to avoid having to make a decision to end the program if the government's legal arguments did not succeed. This program was bigger than wiretapping one individual or a single group, which the police

36 Friedland, *National Security*, 162, n. 11; Allmand testified before the McDonald Commission and stated that when he started his posting as Solicitor General in 1973 he was told that the authority for wiretapping was contained in Section 11 of the Official Secrets Act. He never elaborated on why he thought this section justified the legality of wiretapping. It is not known if any in camera sessions discussed P.C. 3486 and the wiretapping that ensued following its creation. See Canada, *Commission of Inquiry*, 104.

certainly did during this period. The government was creating a program to target many people all at once, including individuals the government and the RCMP merely suspected of not having the right political views. Publicity or a court decision ruling against the government could have ended everything. Security, through mass wiretapping, needed to be legitimized secretly for now.

These events mark the first known occurrence since the end of the Second World War where Canada engaged in mass covert surveillance against its citizens and anyone the government or security services suspected of disloyalty. The monitoring of Canadians required a close level of partnership with corporate society; in this case, with telecommunications companies like Bell Canada. The events reveal a startling amount of collusion and deliberate attempts to obfuscate and to use the legislative process and the law to serve the interests of a government surveillance program that was planned by members of the highest political and security offices of the country. The event reveals the level the government would go to in order to maintain what they conceived to be "security," which involved using existing laws to justify activities – not ones that could be tested in an open court but, rather, ones that the ministers and even the prime minister, as well as the most senior mandarins of the Department of Foreign Affairs and the PCO, justified to themselves. These activities may likely have been declared illegal, and, certainly, as Dwyer stated, they were "distasteful."

Rather than enter into a protracted debate about the necessity for this surveillance, this article has revealed how security could be understood as an ideological project. As a belief system, "knowing" became central to interpretations of security in this period. Knowledge leaks had to be guarded against, but knowledge also had to be collected if it could help uncover secrets that authorities believed could protect the country. Such a belief justified implementing and legitimating actions the government considered security measures, even potentially illegal ones, and it would require secrecy. This included using civil defence as a cover for continuing such surveillance network. Dwyer was in fact correct when he stated that in espionage there is no peacetime. These events reveal that the boundary between the emergency and the normal is an illusory one. Like other laws or events in Canada's past, and in other countries like the United States and the United Kingdom, these events also demonstrate how activities considered necessary in wartime – in this case, surveillance through phone tapping – carried on after the war and achieved normalcy by being legitimized through law. Normalcy of phone tapping was, however, limited to government and security service officials for the time being since it was kept secret

from the public. It would take time for the rest of the population to accept mass surveillance as being legitimate for security. PICNIC was intended to provide security not only for Canada but also for its new intelligence partners and allies. Being a part of the NATO alliance meant that Canada was expected to join the surveillance world. International alliances thus had a powerful influence on domestic policy.[37]

CONCLUSION

In 1951, the federal government, in cooperation with the RCMP and its NATO allies, began mass surveillance programs through the phone system. In Canada, the government launched a covert phone-tapping program called PICNIC under the authority of PC 3486. At the end of the defined emergency, the program was continued using Section 11 of the Official Secrets Act. The irony of the Official Secrets Act was that the law itself contained an official secret. It was not only used to protect whatever knowledge the government believed was "official" and important to security, as it defined it, but it also provided a back door for the government to conduct phone wiretapping. While it would be tempting to place the fault of this growth in surveillance on the intelligence services, what these events reveal is the extent to which elected government officials, and the highest level of the much-vaunted Ottawa mandarinate, did their utmost to put in place a program that they believed was essential to security. The RCMP did not "go rogue" in wiretapping suspected communists. The intelligence services had only the powers the government supported and provided. The oversight of intelligence services is a topic of continued debate since the days of the Cold War. These events reveal how it should not be automatically assumed that parliamentarians are the best guardians of that oversight. Only the government would have the power to maintain secrets and control what knowledge would be public and also what government actions would be public. Secrecy was power. Mass surveillance of citizens did not begin with the 11 September 2001 attacks. It has been going on since 1951. Mass surveillance has a lengthy history.

37 For more on the normalizing of exceptional powers, see Agamben, *State of Exception*. For more on international intelligence alliances, see Gregory S. Kealey and K.A. Taylor, "After Gouzenko and 'The Case': Canada, Australia and New Zealand at the Secret Commonwealth Security Conferences of 1948 and 1951" (paper presented at the Commonwealth Security in the Early Cold War Workshop, Massey University, Wellington, New Zealand, 23 April 2016).

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The government constructed a state apparatus separate from Parliament whereby laws that governed the program, details about it, and all other information concerning it were hidden from the public, the judiciary, and even the country's archives. Perhaps the more substantial point is that the sovereign power in the country could legally exempt itself from the law and use it to legitimate the illegitimate (its mass wiretapping programs and the secrecy required to hide everything related to it), all of which contributed to constructing, imposing, and sanctioning an idea of security.

How long the program continued and how large it grew is not known. There are likely connections to further amendments to the Official Secrets Act, the most significant being the ones made in the 1970s and the 2001 anti-terrorism legislation. What is clear from these documents is that the government wanted to maintain a surveillance program free from the scrutiny of the courts, and it did so alongside other countries such as the United Kingdom and the United States. The legacy apparatus is felt today in revelations that CSIS illegally spied on Canadians and retained data on individuals for nearly a decade in addition to having a secret analysis centre.[38] Given the history of PICNIC and PC 3486, it is doubtful the federal government had no knowledge of this recent scandal and can only leave us wondering how many more secret laws were created and how many potential illegal spying operations were conducted that were secretly approved by government? My search for these records has revealed serious flaws in the ability for researchers to access information because the government was withholding the secret order from the archives and has indicated that there are related files that have been withheld from Canadians. It raises the need for scholars of all disciplines to demand reform to Canada's outdated Access to Information Act and the Library and Archives Canada Act to protect citizen access to historical records and promote state accountability.[39] Reform would help ensure that the secret functions of the state do not become more guarded and important than the public ones.

38 Jim Bronskill, "CSIS Broke Law by Keeping Sensitive Metadata, Federal Court Rules," *Canadian Press*, 3 November 2016, http://www.cbc.ca/news/politics/csis-metadata-ruling-1.3835472 (accessed 3 November 2016.

39 See, for instance, Dave Seglins and Jeremy McDonald, "Government Accused of Hoarding Canadian History in 'Secret' Archives," *CBC News*, 25 May 2017, http://www.cbc.ca/news/canada/government-records-archives-history-1.4129935 (accessed 26 June 2017); Access to Information Act, R.S.C. 1985, c. A-1; Library and Archives Canada Act, S.C. 2004, c.11.

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