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# The Security State and the State of Civil Liberties

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# The Security State and the State of Civil Liberties

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Steve Hewitt, *Spying 101. The RCMP's Secret Activities at Canadian Universities, 1917-1997* (Toronto: University of Toronto Press 2002)
Gary Kinsman, Dieter K. Buse, and Mercedes Steedman, eds., *Whose National Security? Canadian State Surveillance and the Creation of Enemies* (Toronto: Between the Lines 2000)
W. Wesley Pue, ed., *Pepper In Our Eyes: The APEC Affair* (Vancouver: University of British Columbia Press 2000)

NATIONAL SECURITY IN CANADA has been a front-burner topic in the media since the attacks of 11 September 2001. But scholars had been intensely interested in Canada's national security apparatus and its mandate long before this landmark event.[1] This has resulted in critical studies of the state's collection of information on individuals and groups, their methods of determining who and what constitute a threat, their analysis of political climates domestically and internationally, and the decision-making processes through which action has been taken once intelligence has been gathered. The official positions adopted by the state have often differed from the public's perception of what defines national security. Scholars, even more so, have challenged state claims, past and present, about who and what is a threat.

[1]See the introductions to the *R.C.M.P. Security Bulletins* by Gregory S. Kealey, Reg Whittaker, and John Manley. Also consider among others Mark Kristmanson, *Plateaus of Freedom: Nationality, Culture and State Security in Canada, 1940-1960* (Toronto 2003); Larry Hannant, *The Infernal Machine: Investigating the Loyalty of Canada's Citizens* (Toronto 1995); Richard Cleroux, *Official Secrets: The Story Behind the Canadian Security Intelligence Service* (Montréal and Kingston 1990); and James Littleton, *Target Nation: Canada and the Western Intelligence Network* (Toronto 1986).

Stefan Jensen, "The Security State and the State of Civil Liberties," *Labour/Le Travail*, 53 (Spring 2004), 247-56.

Many argue that the national security being protected has been defined by Canada's political, economic, and social élite in ways that contradict standard notions of democratic rights of free expression.

In 1919, the Royal Canadian Mounted Police (RCMP) officially began protecting Canada's national security, which in 1984 also came under the auspices of the newly created Canadian Security and Intelligence Service (CSIS). Individuals and groups who engaged in or were suspected of engaging in subversion were the targets of surveillance from the RCMP. While the RCMP defined almost everyone and anything on the Left as subversives, they were often times grappling with the conundrum of exactly where to find them, how their agents could gather information about them without being exposed, and in what manner they could use citizens to assist them. The successful perpetuation of the RCMP's surveillance operations occurred because agents found it easy to apply their supple definition of subversives to find targets.

Who or what directs the RCMP/CSIS apparatus is an important question that requires historical inquiry. The Security Panel, which exists under the auspices of the Privy Council, and is responsible for the general direction of CSIS, coordinates Canada's national security efforts. It does not, however, direct the day-to-day operations of the RCMP or CSIS, who behave autonomously. Determining where an order or mandate originated is difficult because the documents that contain the answers are normally not released on the grounds of national security concerns. Without question, it has been the successful use of the Access to Information Act and the Privacy Act (ATIP) by scholars and activists that has made works such as the three under review here possible.[2] Record Group 146, housed in the National Archives of Canada (NA), comprises the documents generated by the RCMP and CSIS which help to shed light on the past activities of Canada's security apparatus. *Whose National Security?* and *Pepper In Our Eyes* are both intended as primers for people interested in issues of national security or the events surrounding the APEC affair, and the constitutional aspects of political policing in Canada. *Spying 101*, with its focus on universities, marks an important step forward in our understanding of the role of universities in society as well as a very good case study of domestic surveillance in Canada.

Canadians hold universities in a position of respect and reverence, elevated perhaps by their mythical ability to turn Canada's youth into employable adults. Universities in Canada are perceived by many as autonomous, independent institutions that occupy a moral high ground within society. But, as public institutions that are funded by federal and provincial governments, but not managed by them, they are often viewed by élites, especially the RCMP, with suspicion because of their autonomy and exclusive membership. The extent to which the RCMP went to investi-

[2]Gregory S. Kealey, "The Empire Strikes Back: The Nineteenth-Century Origins of the Canadian Secret Service," *Journal of the Canadian Historical Association*, 9 (1998), 6.

gate both university students and staff members is rivalled only by the zealousness with which they investigated alleged Cold War spies. Since the end of World War II, individual examples of RCMP activities on university campuses have been alarmingly frequent. While the RCMP did not become directly involved in university affairs, its impact on the decision-making process was tangible.

Determining who constituted a threat to Canada's national security was a task that the RCMP undertook with relish. Groups ranging from high school students and housewives to professors and postal workers became targets of RCMP surveillance. It appears that almost any group, large or small, suspected of having Communist infiltration, leanings, or even just susceptibility became targets of RCMP surveillance. Gary Kinsman and his co-editors Dieter K. Buse and Mercedes Steedman remind us: "Although the national security surveillance campaigns touched the lives of tens of thousands of people in Canada, we also need to keep in mind (as a number of the chapters here indicate) that this surveillance was never total or monolithic. The national security campaigns were never entirely successful." (Kinsman *et al.*, 4) Determining whether or not the RCMP was successful depends greatly on one's point of view. Did the RCMP achieve the goals it set for itself? The answer to that question may in fact be yes. Adjudicating whether or not the goals themselves were beneficial to Canada or even legal is an entirely different question. The largest obstacle in judging the success of the RCMP is manifested in the ironclad restrictions to RCMP documents that deal with national security, especially specific operations, agents and officers, and targets.

*Whose National Security?* is the result of a conference held in late November 1996 at Laurentian University that gathered a group of scholars to discuss the history and legacy of Canada's national security policies and practices. Academics presented papers on aspects of national security that went well beyond studies of the RCMP to focus on non-state agencies such as churches and universities. In the introduction to the collection we are reminded that "national security has been a code word for the defence of powerful business interests." (Kinsman *et al.*, 3) The authors in *Whose National Security?* grapple with the complexities of non-state, élite institutions, which engaged in information gathering. The relationship between those institutions and the RCMP/CSIS is fundamental to our understanding of the extent to which groups in Canada went to defend/impose their definition of "national security" upon Canadians.

One of the most interesting and instructive sections of this edited collection is "Finding Security in the Archives," consisting of three papers by Larry Hannant, Kerry Badgley, and Heidi McDonnell respectively. Hannant spent many years as a communist activist, communist-bookstore owner, and frequent demonstrator. His suspicion that the RCMP had been spying on him proved well-founded. Hannant, however, was unaware of how serious a threat to Canada's national security the RCMP and CSIS labelled him. After seven years of non-party involvement, Hannant applied to have his file released. "As it turned out, CSIS did not share my idea that I

was now a respectable, trustworthy citizen, and its response to my request was negative. Putting aside the bureaucratic jargon, CSIS refused to confirm or deny the existence of a file in my name." In 1996, his friend's partner, who had access to such files, confirmed that his file was still an active one. Unbeknownst to even himself, Hannant had been harbouring a known Irish terrorist in his home sometime between 1985 and 1988. The terrorist, he deduced, was Father Des Wilson who "for many decades had been devoting himself to building self-help enterprises among the city's [Belfast] unemployed," and only " by the most perverted thinking could he be considered a terrorist." (Kinsman *et al.*, 213-14) The history of intelligence gathering in Canada demonstrates that this is not an isolated example of baffling "security" logic.

Badgley's piece is based on his work experience as an archivist at the National Archives of Canada. He warns prospective researchers that there are numerous pitfalls to avoid when filling out forms at the Archives, and of the importance of being as specific as possible when describing what files you want to access. He reminds researchers that it is CSIS that determines both whether a file is to be released and in what form. Heidi McDonnell also offers us a personal perspective of conducting research using classified documents held at the NAC. McDonnell explains that when dealing with a multitude of government departments, she often received the same document from more than one department, that the lists of documents released through departments did not match the list of documents released through public archives, and that she encountered a wide range of cooperation when dealing with different government departments' access officers. She does not, however, discourage researchers from requesting the same documents from different departments because, as she notes, some documents are censored in different ways. McDonnell offers a very useful suggestion for researchers who wish to aid other researchers with their trips to the NAC: "I suggest that if you are doing research in the area of national security you make a list of the documents you have received through access to information requests and share the information with the archivists at the National Archives so that they can then release their own copies of these documents." (Kinsman *et al.*, 230) This is a suggestion, one hopes, that researchers are following.

As the public influence of the CPC waned in the 1950s and 1960s, the RCMP became very interested in other leftist groups, immigrants, government employees, and gays and lesbians. These "new" national security threats were constructed by the RCMP to perpetuate the security-state apparatus in the Cold War climate that emphasized internal security risks such as employees deemed susceptible to blackmail. Gary Kinsman continues his past work by suggesting that the RCMP's need for multiple informants to label a government employee as gay or lesbian backfired. The reliance on informants became tenuous as the gay community ostracized informants, which caused the RCMP to find it nearly impossible to recruit or coerce new informants. (Kinsman *et al.*, 150) This caused the RCMP to develop a dubious me-

chanical device known as the Fruit Machine that was designed to scientifically prove if someone was gay or lesbian.[3]

A great deal of what we know about RCMP/CSIS activity on university campuses during the Cold War is the result of victims reporting their experiences through academic conferences, articles, and books, as well as in the popular media. Their stories parallel the experiences of academics who lost their positions through infringements and violations of their academic freedom.[4] The number of academics who did not report their experiences is unknown, but it is plausible to estimate that number as being substantial. When confronted with information that portrayed them as threats, many academics wondered to themselves: How do they know what they know? And who told them? Where did university presidents learn of a professor's affiliation with the CPC or their sexual orientation? In fact, security clearances and background checks were routinely asked for by universities. (Hewitt, 98) The RCMP received their information through two primary methods: conducting espionage themselves on university campuses and receiving information from informants within the professorial, non-academic staff, and student populations.

For some years now Steve Hewitt has been informing Canadians about RCMP activities on university campuses, including a paper in *Whose National Security?*[5] By virtue of his interest and research into Canada's national security past, he became a target of surveillance as well when an acquaintance gave his name to the RCMP following the Project Sidewinder leak. (Hewitt, xiii) He has not been alone in this endeavour, although the number of those actively publishing in this field is not very large.[6] Hewitt is one of the few, however, who undertook research in this area

[3]Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities*, (1987; Montréal 1996); and Gary Kinsman, "'Character Weaknesses' and 'Fruit Machines': Towards an Analysis of the Anti-Homosexual Security Campaign in the Canadian Civil Service," *Labour/Le Travail*, 35 (Spring 1995), 133-61.

[4]See for example Michiel Horn, *Academic Freedom in Canada: A History* (Toronto 1999); Michiel Horn, "Canadian Universities, Academic Freedom, Labour, and the Left," *Labour/Le Travail*, 46 (Fall 1996), 439-68; and Frederick Gibson, "The Cold War and the University: The Cases of Israel Halperin and Glen Shortcliffe," in *Queen's University: Volume II, 1917-1961: To Serve and Yet Be Free* (Montréal and Kingston 1983).

[5]See as a selection of his work Steve Hewitt, "Snitch: Academic Freedom, Police Informants, and Canadian Universities, 1920-1984," paper presented at the Annual Meeting of the Canadian Historical Association, 2003; Steve Hewitt, "Reforming the Canadian Security State: The Royal Canadian Mounted Police Security Service and the 'Key Sectors' Program," *Intelligence and National Security*, 17 (Winter 2002), 165-84; "'Information Believed True': RCMP Security Intelligence Activities on Canadian University Campuses and the Controversy Surrounding Them, 1961-71," *Canadian Historical Review*, 81 (June 2000), 191-228; and Steve Hewitt, "Spying 101: The RCMP's Secret Activities at the University of Saskatchewan, 1920-1971," *Saskatchewan History*, 47 (Fall 1995), 20-31.

[6]Those actively engaged include Gregory S. Kealey, Reg Whittaker, Wesley Wark, and Larry Hannant.

without having earlier been a target of investigation himself, at least to his knowledge. Three themes emerge in *Spying 101* that merit specific attention here. The first is the paradox of impressionable youth who are susceptible to communism/socialism, yet who are tapped as the future leaders of the country politically, economically, and intellectually. Second, the level of education of RCMP officers who were spying on university professors, students, and staff was usually lower than their targets, although, beginning in the late 1960s, agents and officers began to earn degrees as well. Despite this new level of education, intelligence officers faced intellectual barriers in their attempts to analyze what constituted a threat to national security. That resulted in the third theme that emerges: an inconsistent response by administrators to the presence of RCMP agents on campus.

Beginning in the 1920s the Mounties viewed university campuses as hotbeds of potential radicalism and as breeding grounds for subversives. Hewitt explains that the RCMP understood that part of its counter-subversive role was to protect "universities and students from 'undue influence' on the part of Communists, other radicals, and enemy intelligence agencies." (Hewitt, 5) The RCMP had problems identifying with certainty who was a Communist, a radical, a subversive, or an enemy agent on university campuses, except for those making public speeches that were well advertised. Not surprisingly student newspapers quickly became an important source of information for intelligence officers. The inability to identify radicals in a sophisticated manner led to a bi-polar categorization system that lumped vast numbers of people into the safe or subversive categories. In these early years (1920-1945) of the service, it was easier to identify the subversives, especially in relation to the CPC. (Hewitt, 41) At universities, however, the RCMP encountered resistance from some parents who vehemently argued that the university was the safest place for impressionable youth to come into contact with new, foreign, and even Communist ideas in order for them to learn about their alleged enemies. Following the end of World War II, the task of identifying subversives became much more difficult as the CPC declined in numbers, and with the emergence of the New Left in the 1960s the RCMP's ability to identify the "enemy" became much more difficult. In a paradoxical twist, however, as the enemy became harder to exactly define, its threat to Canada's national security was presented as increasing almost exponentially.

The inability to adequately identify the enemy was facilitated by the fact that the vast majority of intelligence officers had never attended university, with many having failed even to graduate from high school. This lack of education among officers persisted well into the 1970s and 1980s, and represented a major concern for senior RCMP administrators. The problem this caused was most evident in reports that include analysis of speeches or meetings of Marxist groups. This was particularly glaring when agents attempted to gauge the threat-level of a speaker or the speaker's success at winning over an audience. Agents, therefore, simply wrote about anyone and everything they heard, saw, or were given while at the meeting. This resulted in reports that were not analytical or truly useful in carrying out the

RCMP's mission of understanding subversion. In order for the RCMP to understand its campus-based targets in the 1960s and 1970s — such as groups from the Left, the New Left, or their old foes, the Communists — agents recruited students, faculty, and staff to participate in the espionage. Many voluntarily informed the RCMP on the activities of their colleagues.[7] Paid and unpaid informants replaced the arduous and illegal activity of agents conducting espionage on campuses.

University administrators were outwardly very uncomfortable with the idea of RCMP agents on their campuses, especially when their presence was exposed in the media. The exposure of RCMP activity in 1962 produced the informal 1963 Pearson-Laskin Accord, which was "negotiated" by the Canadian Association of University Teachers (CAUT) and National Federation of Canadian University Students (NFCUS) with Prime Minister Lester Pearson and the RCMP. According to the CAUT/NFCUS side, the agreement meant "an end to sweeping security investigations on university campuses," while the RCMP "saw it as a continuation of the restriction on recruiting sources on university campuses" already in effect since 1961. (Hewitt, 101) The 1960s represented the highest point of Canadian university radicalism, reaching its peak with the Sir George Williams College occupation and fire in 1969. The 1970s began as a decade that the RCMP believed would be far worse than the 1960s. This did not turn out to be true, although events flared up enough in the early 1970s to justify keeping the radar turned on.

The Asia-Pacific Economic Cooperation (APEC) conference of 1997 at UBC in Vancouver was an event for which Canada's security forces prepared themselves, including possible mass-disturbance scenarios. RCMP plans included providing protection and guaranteeing the security of international dictators like Indonesia's President Suharto. The recent history of this type of international conference has always included substantial, sustained, and well-organized protests. Holding the APEC conference on the UBC campus should, at the very least, have signalled to the RCMP that university students would be there as demonstrators. In the introduction, Wesley Pue poses a question that sets the tone for the collection: "What did police do in the autumn of 1997 to so stir the University of British Columbia's notoriously docile students?" (Pue, 5) The responsibility for the use of excessive force is rightly laid at the feet of the RCMP and not those peacefully demonstrating.

One of the more poignant articles in the Pue collection comes from RCMP Constable Gil Puder. The perspective offered by Puder is important because it answers two questions: How and when is it appropriate for police to use force? Who are the officers making that decision, and how do they go about making that decision? Defending and enforcing the rule of law is an occupation that RCMP officers engage in on a daily basis. At the APEC conference they were equipped with the knowledge that protesters would most likely confront them in one way or another. Managing the use of force is governed by law: "[E]xcessive use of force amounts to an offence

[7]Hewitt, "Snitch,"12-19.

of assault under the Criminal Code of Canada." (Pue, 129) While it is reasonable that officers should be able to protect themselves when subduing violent individuals, only reasonable amounts of force are acceptable; a very fine line exists in the minds of officers. At the APEC conference, however, it was not physical violence that officers encountered; protesters only used signs, voices, and songs. This normally should not have set the RCMP off on a tear-gas escapade. In this case, however, it was the direction received from the Prime Minister's Office that made the officers on the street over-zealous in their decisions to control everything and everyone. Their expectations of confrontations may have increased the likelihood of producing confrontation.

The second question that is answered by Puder is one that has a very complex answer, one that may explain a great deal about the excess use of force by police. There is, of course, a certain degree of latitude granted to officers within which to make the decision to use force and to what level to escalate their response. For the most part, however, the escalation of force follows a fairly regular progression. Puder provides the reader with an example of the questions officers must answer quickly in a confrontational situation: "When an offender resists, how will officers choose whether to grapple or to use pepper spray? Should they strike a blow with their hand or baton? Do circumstances demand the use of a firearm? Or does prudence require police to withdraw, disengaging from the situation to prevent unacceptable risks to themselves or others?" (Pue, 131) What occurred at the APEC conference did not follow that regular set of progressions. Were there officers who were more likely to use excessive force assigned to conference security? Puder suggests that this is indeed what happened, and a careful examination of the photographs from the conference confirms this:

> In situations such as APEC, police officers who are not in top physical condition will often need to escalate their response in order to gain control. For this reason, crowd control and emergency response teams (who because of the nature of their work regularly use force) unquestionably require regular, valid physical testing. Appropriate physical standards should be mandatory for police who are likely to use force, since physical testing is one of the few objective, unbiased methods of accurately predicting an officer's performance. (Pue, 133)

Overweight officers are more likely to use excess force to compensate for their physical inabilities, and thereby to place lawful protesters at risk. This, of course, opens a series of questions that may explain the behaviour of some of the officers: Are older officers more likely to use excess force? Are younger officers more likely to use force? While this line of reasoning may lead to ridiculous questions, the composition of the security force is valid in terms of identifiable factors that lead to the use of excess force. These questions may lead to some answers regarding the actions of individual officers. But it is unlikely that the answers are sufficient to explain the actions of the entire force. Fat is not where it's at in explaining police brutality.

*Pepper In Our Eyes* is a collection of essays that constitutes an excellent introduction for those interested in the constitutional and legal aspects of the APEC affair. One of the themes that runs throughout this collection is accountability: among protesters, politicians, and the police. The public is accorded an enormous role in ensuring the accountability of police and politicians because only they can make the demands to insist upon it. Joel Bakan posits a question that other authors in the collection echo: "Is Canada becoming more like some of its APEC partners — a blatantly repressive state enforcing a highly unequal and undemocratic society? Perhaps, and we should be worried." (Pue, 84) Bakan, of course, is absolutely correct that Canadian citizens should be intensely concerned with the activities of CSIS, including the RCMP.

What does the future hold for scholars investigating the history of Canada's intelligence and national security? The answer is that there is a lot of terrain yet to be mined by historians with the patience, resolve, and funding opportunities to see larger projects through. Many of the topics covered in *Whose National Security?* warrant monograph-length studies, including the conflict between security and civil liberties, homophobia within the national security apparatus, activists' biographies, and following the creation of CSIS, its relationship with the RCMP in defining and protecting Canada's national security. Also demanding attention from scholars are clearer portraits of civil service personnel whom the RCMP and CSIS have investigated. The espionage campaigns carried out by the state against its own employees should reveal a great deal about how security agents and officers interpreted who and what constituted viable threats against national security. The presence of RCMP detachments on First Nations reserves also deserves deeper scholarly investigations, especially regarding the intelligence gathered by CSIS prior to events such as those that transpired at Oka.

Perhaps, in time, more information and documentation will be available that will shed light on the APEC affair. Until such time many of the questions raised in *Pepper in Our Eyes* can be explored in other contexts. The relationship between the Prime Minister's Office and the RCMP/CSIS and its national security campaigns, for example, is one that may never be fully understood due to protections afforded both groups in the name of national security. Other areas of investigation that may be of great value to the scholarly community include studying the background of agents and officers prior to recruitment, as well as their lives while employed. These include factors that affect a person's judgement in stressful situations and whether or not their superiors should have allowed them to work high-tension events such as APEC.

Even after writing an excellent and comprehensive monograph on the RCMP's activities on Canadian university campuses, Steve Hewitt continues to investigate university-campus espionage and the myriad of relationships that existed among agents, informants, and targets more generally. Important questions that merit further inquiry include the educational level of agents assigned to spy on university

professors. The ability of the RCMP to understand complex political philosophies such as communism was clearly limited by employing agents who had only Grade 11 education. To understand how the RCMP compensated for this, one might ask what on-the-job training the RCMP provided for its agents to aid them in understanding the philosophical foundations of the groups they believed to be threats to Canada's national security.

All three of the works reviewed here include the standard cautionary, introductory remark: this is a not a definitive work, much more still needs to be done. The successful navigation and application of ATIP legislation requires much patience.[8] Significant delays will occur if the documents that are expected to be released are not, if the ones that are released contain little or no information after being censored, or if the costs associated with the acquiring of the documents are beyond the student's financial means. The secret activities of the RCMP in Canada may unfortunately take years before they are revealed using ATIP legislation, and doctoral students should be able to finish their programmes within reasonable periods of time. This situation may very well change as more and more documents are released and shared by scholars, which would make it possible for doctoral students to conduct their research in a timely manner. As the examples provided by Larry Hannant and Steve Hewitt suggest, some graduate students have fruitfully become involved with RCMP/CSIS research.

In the post-11 September world, CSIS announced it would hire more than 200 new agents, increase security clearance procedures, and be ever more vigilant in protecting our national security. International terrorists were allegedly targeting Canada as an ideal staging ground for the next big attack on the United States, which provided additional credence to CSIS' requests for increased funding. Canada's national security priorities appear to be expanding significantly, and this is coupled with pressure for legislation that infringes upon Canadian citizens' rights and freedoms. These demands are eliciting a fair amount of support from legislators, who are on the receiving end of international pressure (American mostly) to increase border and airport security budgets and programs. The historical evidence reveals the possible dangers of these developments for civil liberties. If those in charge of the security apparatus along with their agents in the field have an expansive definition of "terrorist," a confining notion of the limits of dissent, and little understanding of political philosophies, attacks on free expression in Canada, so manifold in the past, may become epidemic in the future.

[8]See for warnings of painful experiences with ATIP legislation Larry Hannant, "Using the Privacy Act as a Research Tool," *Labour/Le Travail*, 24 (Fall 1989), 181-85; and Gregory S. Kealey, "The Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Public Archives of Canada, and Access to Information: A Curious Tale," *Labour/Le Travail*, 21 (Spring 1988), 199-226. For an instructive reminder about the inconsistent release of personal files see Kealey, "The Empire Strikes Back," 4-5.