

IP 155-1

John Macdonald
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Meeting 1/77 of the Interdepartmental Committee on Security and Intelligence was held on Thursday, April 21, 1977, at 10:00 a.m. in Room 415 Langevin Block.

PRESENT

- Mr. R. G. Robertson
(Secretary to the Cabinet for Federal-Provincial Relations) (Chairman)
- Mr. M. F. Yalden
(Deputy Minister of Communications)
- Mr. H. B. Robinson
(Under-Secretary of State for External Affairs)
- Mr. D. S. Thorson
(Deputy Minister of Justice)
- Mr. C. R. Nixon
(Deputy Minister of National Defence)
- Mr. R. Tassé
(Deputy Solicitor General)

ALSO PRESENT

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| Mr. John Hadwen
(Department of External Affairs) | Miss A. Szlazak
Mr. P.G. Morry
(Public Service Commission) |
| Mr. J. H. Landriault
(Department of Manpower and Immigration) | Mr. M. R. Dare
(R.C.M. Police) |
| Admiral R.H. Falls
M/Gen. R.J.G. Weeks
(Department of National Defence) | Mr. R. P. Bourne
(Ministry of the Solicitor General)
Mr. Bruce MacDonald
(Treasury Board) |

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- Mr. D. W. Hall (Secretary)
 - Mr. A. Breakspear (Asst. Secretary)
 - Mr. G. Fraser (Asst. Secretary)
(Privy Council Office)
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I. Homosexuality, the Public Service and National Security

The Committee had for consideration a document of this title dated March 25, 1977, submitted by the Secretary, to which was attached a draft document "The Problem of Homosexuality in Relation to Employment" which might be provided to departments and agencies.

The Chairman said there was a need for some departments, e.g. External Affairs, to have guidance in the difficult area of employment of homosexuals in certain sensitive positions. The document for consideration attempted to set forth the problems and to propose a degree of guidance which could appropriately be given.

Mr. Robinson said the paper provided an appropriate response to the need of the Department of External Affairs in dealing with cases. It was important that any departmental position taken be in accordance with government policy. He was aware that the whole area was also one of great importance from the point of view of civil rights.

Mr. Robertson agreed that a main problem was to balance legitimate security concerns with individual liberties.

Miss Szlazak said that the document did not distinguish clearly between employment of homosexuals generally and denial of security clearance. She emphasized the need for frankness in cases where security clearance was not granted. She added that the paper did not bring out the fact that the Public Service Security Inquiry Regulations, approved over two years ago, had perhaps not been used because people were reluctant to avail themselves of an inquiry. The paper did not accurately represent staffing practices in the government today.

Mr. Robertson suggested that the discussion be directed to the guidelines, which proposed what should happen.

Mr. Yalden said the paper did not give enough emphasis to the present situation. Amendment of the Criminal Code made it less likely that homosexuals could be blackmailed. The paper gave too much emphasis to the atmosphere of the past and did not adequately reflect changes in attitude.

In the general discussion which followed, these points were made:

- (a) It was important to emphasize that there was no prohibition on employment of homosexuals in the public service. The only (indirect) reference was in Cabinet Directive No. 35 where sexual behaviour was set out as a factor for consideration in making judgments concerning access to classified information.
- (b) The problem related not so much to homosexuality as to indiscretion in sexuality - a problem which applied to heterosexuals also.

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- (c) The problem had less to do with the criminal law than with social attitudes, which continued to encourage secrecy and hence blackmail.
 - (d) In any paper intended for Ministers, care should be taken not to give undue emphasis to viewpoints from many years ago. On the other hand it seemed that in general attitudes to sexual behaviour were not fundamentally different than they were fifteen years ago.
 - (e) There should be greater emphasis on the problems in employment of homosexuals in positions which would involve service in certain countries abroad where the laws were strict.

Mr. Robertson expressed the view that, from the point of view of security, despite change in the law, the basic problem was not fundamentally different than it was fifteen years ago. The possibility of blackmail remained, and could pose a threat to security. There was perhaps a difference in degree, but the problem remained. It was desirable that the proposed revised Cabinet directive on personnel security clearance be approved before the guidelines were issued, so that reference in the latter to a 1963 directive could be omitted.

The Committee then examined in detail the draft document "Homosexuality in Relation to Employment". The following points were made:

- (a) There was concern that, apart from situations involving security clearance, offers of employment might not be made to homosexuals if their orientation was known, and the persons would not be given the reason - in spite of the statement made in the first sentence of paragraph 2 of the proposed document. (It was pointed out, however, that if that was the case, the practice was wrong and the Public Service Commission should take appropriate action.)
- (b) The title of the document did not deal with the subject. The second paragraph was confused and should be sorted out to distinguish clearly between employment generally and employment involving security.
- (c) Effort should be made to avoid moralizing in consideration 7. The reference to blackmail or coercion of homosexuals could be equally applicable to promiscuous heterosexuals. It was first suggested that the paragraph should be revised to indicate that blackmail or coercion was less likely where there was frankness. Later there was concurrence that, while the points made were important (e.g. in the case of an employee who disclosed his homosexuality and the department decided to retain him in sensitive employment), the paragraph should be deleted and reliance should be placed on oral advice. If departments

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wanted further guidance they could get it from the Security Service or the Privy Council Office.

- (d) The quality of a homosexual relationship, as in the case of a heterosexual, was important from the point of view of exploitation by hostile intelligence services. There was an element of judgment to be exercised by the employer in this regard. Certain types of relationships were likely more socially acceptable than others. This factor should be reflected in the guidelines.
- (e) The guidelines should relate primarily to employment involving security, and the opening part should make clear there were no restrictions in legislation or regulations on employment of homosexuals.
- (f) Guideline 1, suggesting the possibility of limitation on employment of homosexuals in "any position where security clearance might eventually be involved" seemed too broad. It could virtually bar employment and advancement of promising homosexuals in the public service. A better procedure would be to tell the homosexual initially that the employer was aware of the orientation and that it might affect his career. The proposed guideline represented a possible infringement on rights. It should be revised to restrict its application as clearly as possible to employment involving the need for security clearance.
- (g) Guideline 2 should be revised to indicate that there might be exceptional circumstances in which the prohibition could be waived. A better approach might be to suggest that specially careful consideration was needed in the case of higher classification levels. Emphasis could be placed on the responsibility of the deputy minister to make decisions, and to ensure that risks were minimal. It was appropriate to emphasize the difference between the lower and higher levels of access, but there should be some qualification with respect to the guideline concerning the latter. It should make clear that there would have to be exceptional circumstances to permit access to the higher levels, but that such circumstances could exist, particularly in relation to changing attitudes. Such a provision might reduce the number of difficult situations that could arise in the future. Any responsible deputy minister would have to consider such situations and make judgments. It was part of good management. There was a problem if the provision were left in, but also if it were removed. Guideline 2 should be revised to emphasize that judgment was involved, and to remove any impression that there was a categorical exclusion of homosexuals.

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- (h) It was important, in a situation where a person in the public service was known by the employer to be a homosexual, that this did not contribute to drive him underground. Frankness should be encouraged.
- (i) Guideline 2 muddled two concepts of security - that covered by security classifications (Secret, etc.) and that where there was sensitive information but the classifications did not apply e.g. the budget. This kind of problem was under study, but to date the policy and procedures relating to personnel security clearance had not made distinction between the two. The task of arriving at an improved system of classifying information was exceptionally difficult.
- (j) Mr. Robinson expressed the view that all rotational service abroad was such that homosexuals should not be employed in this area. However it was noted that guideline 4 was not categorical, and the phrase "in general" provided for judgment to be exercised. It might be better to omit this guideline and achieve its purpose through the other guidelines. Guideline 4 could exclude homosexuals entirely from External Affairs. (This was the existing situation, in fact, in the case of rotational service abroad.) It would also greatly affect many other departments, e.g. Industry, Trade and Commerce and Manpower and Immigration. (The military would more likely be covered by guideline 7.) While guideline 4 might cause embarrassment, even if it were eliminated the situations it was intended to cover would exist, and action would have to be taken and defended anyway. Mr. Robinson favoured a frank approach which would make clear that homosexuals could not generally be employed in rotational service abroad. A solution might be to include a phrase such as "since rotational service abroad involves access to classified information, ...". Miss Szlajak considered that if there was a guideline providing that homosexuals could not be employed in rotational service abroad, this should be made clear to persons interested in joining the public service. Mr. Robinson said External Affairs did not do this at present but would like to be in a position to make it clear that there was no point in homosexuals' applying. Miss Szlajak said the greatest possible degree of frankness was desirable. The conditions of employment should be made clear at the beginning. Mr. Robinson said such a procedure would involve revision of CD 35 which contained no provision for discussion of this kind with applicants. Such discussion was limited to persons already in the public service. If procedures were changed to be frank with applicants, there would be a whole new situation which would need careful consideration.

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- (k) There was extensive consideration of the approach to be taken in the case of applicants. Mr. Robertson pointed out that homosexuality was only one area of security concern, and any provision made with respect to it would have to comply with the general policy. At present the principles applied only to employees in the public service and not to candidates. Admiral Falls agreed there should be maximum frankness but suggested that the reason for exclusion should be the public interest rather than security. This would also cover the situations involving close association of employees, isolation, etc. Miss Szlazak said that it was legitimate for the employer to justify employment decisions on grounds of "personal suitability". Security was only one aspect of this general area. Mr. Robertson emphasized the problems involved in security cases when evidence could not always be proven or disclosed. Miss Szlazak said that exercise of judgment by the employer in such cases was legitimate.

Mr. Tassé said his Minister had raised the point of greater frankness to applicants for employment in the context of the revision of CD 35, and in relation to the Maguire case.

The Committee noted that it would be difficult to try to make rules to cover all situations. The guidelines should emphasize that judgment should be exercised, bearing in mind the public interest, with respect to persons applying for employment. A categorical rule either way could not be made. Guideline 5 was appropriate for persons in the public service, but a paragraph should be added with respect to applicants, stating that judgment must be exercised, in each case, as to the degree of frankness. It was not possible to be categorical either way. With respect to rotational service abroad, the guideline 4 should make clear that the reason for restriction on employment of homosexuals was the need for access to classified information in such service.

The Committee also noted the pressures to include sexual orientation in the prohibited grounds of discrimination in the human rights legislation. The Security Advisory Committee had been asked to provide reasons for use by the Minister of Justice in explaining why sexual orientation should not be included. The only arguments given had related to security. There was doubt as to whether they were publicly defensible, and there could be challenges in the courts.

The following further suggestions for revision of the guidelines were made:

- (a) More emphasis should be placed on the objective factors set out in guideline 6.
- (b) Guideline 7 should be revised to suit the present situation and should depend less on historical factors.
- (c) The part of guideline 7 beginning "However" should be put in a section dealing with general employment.

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Mr. Thorson was concerned about the policy problem in CD 35: if a person admitted he was a homosexual, did it follow that his reliability was in doubt? Mr. Robertson said this point must be looked at when the revised security clearance directive was examined by Ministers. The draft directive should be sent to Mr. Thorson for examination. It was important that there be no problem in this respect. Mr. Thorson suggested that perhaps guidelines could be avoided and the part in the directive concerning doubtful reliability recast. Mr. Robertson said this would be difficult without undesirable precision in the Cabinet directive.

Miss Szlazak said it was important that the Privy Council Office monitor denials of security clearance to homosexuals, to ensure that the guidelines were applied fairly. Departments might be reminded of the provision in guideline 8, in a covering letter.

The Committee agreed that the draft document "Homosexuality in Relation to Employment" be revised in the light of the discussion and circulated to members with a view to obtaining a consensus secretari ally.

II. Intelligence Advisory Committee:
Review of 1976 and Forecast for 1977

At the Chairman's request, Mr. Hadwen introduced the annual report of the Intelligence Advisory Committee (IAC). He drew particular attention to the prospects for 1977, citing as areas in which useful developments were underway:

- (a) planning for improvements in secure telephone facilities, to serve security and intelligence authorities;
- (b) discussions with the intelligence allies (USA, UK, Australia and New Zealand) aimed at increasing the usefulness of IAC product to the Canadian government;
- (c) establishment and functioning of the new Economic Intelligence Committee, on which a report was to be submitted to the ICSI in the near future and for which the re-staffing of the Special Research Bureau to levels approved by the ICSI was an urgent concern.

The Chairman proposed, and members agreed, that the ICSI accept the present IAC report. The Committee looked forward to the forthcoming report on the Economic Intelligence Committee.

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III. Security Clearance Procedures and "Client Personal Data"

The Committee had for consideration a memorandum of this title from the Secretary, dated April 6, 1977, concerning the security status of certain "client personal data" for which the Department of Manpower and Immigration was responsible.

Mr. Landriault pointed out that the Department of Manpower and Immigration and the Unemployment Insurance Commission were merging, and arrangements were being made to ensure integration of the application of security policy and procedures in the two areas. The question had arisen of the application of the definition of the security classification Confidential, as set out in the guidelines in "Security of Information in the Public Service of Canada", to certain data related to registration for work and application for benefits. If it could fairly be decided that the classification Confidential was not required, hiring practices would be facilitated, and it might be possible to employ competent persons in certain areas who might otherwise be denied for security reasons.

Mr. Bourne again referred to the study being undertaken of the classification system, particularly the security status of material that was sensitive but did not relate to national security. Perhaps a decision on the Manpower and Immigration problem could await submission of the first draft of the report in the matter.

Mr. Robertson said this would be difficult in view of the need to process the document through official and Ministerial levels before a decision was reached.

The following points were made:

- (a) The data in question appeared to relate to privacy, and, as Bill C-25 recognized, it was important to ensure protection of individuals in this respect.
- (b) An appropriate solution might be the application of the classification Restricted as set out in the guidelines. This would ensure that the data involved was for official use only, and at the same time would eliminate the need for security clearances.

Mr. Landriault considered that this would represent an appropriate solution of the departmental problem.

The Committee agreed:

- (a) to advise that "client personal data" held by the Department of Manpower and Immigration as defined in the letter from the Deputy Minister of Manpower and Immigration to the Chairman dated February 11, 1977, would be appropriately protected if the security classification Restricted were employed; and
- (b) this advice should be communicated to the Deputy Minister by the Chairman.