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MEMORANDUM FOR THE CABINET

MEMOIRE AU CABINET

Proposal for a Revised Cabinet Directive on Personnel
Security Clearance

Projet de révision de la directive du Cabinet concernant
l'habilitation au secret

1. Problem

The Cabinet Directive (No. 35) which presently sets out policy and procedures for the security clearance of persons to have access to classified information was approved by the Cabinet in 1963, and needs revision.

2. Objective

To obtain approval for the attached Cabinet Directive on Personnel Security Clearance, which restates the policy and brings up to date the procedures for this purpose in the light of twelve years' experience, and which is intended to replace the 1963 directive.

3. Factors

On April 28, 1977, the Cabinet considered a memorandum submitted by the Chairman of the Interdepartmental Committee on Security and Intelligence (Cabinet Document No. 661-75, 29 August, 1975), submitting for approval a draft Cabinet Directive on Personnel Security Clearance. The Memorandum made the following points:

- (a) The proposed revision retained the basic principle set out in Cabinet Directive No. 35 that departments and agencies are

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responsible for their own security and for implementing government security policy and procedures and applying them to their own particular circumstances.

- (b) The revised directive referred to the inquiry procedure set out in the Public Service Security Inquiry Regulations approved by the Governor-in-Council on 27 March, 1975, which supercedes the provision in CD-35 for a review of senior officials in security cases involving the possibility of dismissal of public servants.
- (c) Annex A of the revised directive set out revised criteria relating to loyalty and reliability, on the basis of which access to classified information would be granted or denied. Attention was drawn to the fact that the reference in CD 35 to "illicit sexual behaviour" had been revised to "sexual behaviour"
- (d) The revised directive would require a fingerprint check of all persons being considered for access to classified information. (This would eliminate the exclusion of this requirement in the case of persons in industry, specifically set out in CD-35).
- (e) Annex B of the revised directive set out a Personnel Security Clearance Questionnaire, to replace the Personal History Form presently in force, to be completed by persons being

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considered for access to classified information. The proposed questionnaire was drafted with a view to keeping to a minimum the amount of information solicited consistent with security needs, and to ensure it is used only where access to information involving national security is concerned.

- (f) The revised directive emphasized the role of the security officer in advising the deputy head and in applying departmental security procedures.

On April 28, 1977 the Cabinet agreed that:

- "1. the text of the proposed directive should be revised by officials, in particular with a view to:
 - (a) replacing the reference to "common-law partner" in Annex B (Personnel Security Clearance Questionnaire with a more appropriate one such as "co-habitant",
 - (b) including more effective provisions to ensure frankness to individuals in the private sector, particularly mechanisms to provide information and a fair hearing, in cases where individuals might be adversely affected by decisions taken for security reasons, especially where dismissal was involved, and in this respect there should be consultation between the Department of National Defence and the Department of Supply and Services;

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(c) providing a more effective definition, in Annex A (Criteria for determining personnel security clearance), of the criteria relating to loyalty, particularly those set out in I (b) (vi);

2. the draft directive as revised should be submitted to Ministers for consideration."

The attached submission is a revision of the draft, intended to carry out the directive of Cabinet.

Revised { ~~The term "co-habitant"~~ has been ^{proposed} substituted for the term common-law partner in the questionnaire (Appendix B).

With respect to the provision relating to non-public servants, effort has been made to emphasize the responsibility of the employer and the government to ensure frankness ^{and} fairness to individuals who might be adversely affected by decisions taken to deny or limit access to classified information, particularly where dismissal is involved, and to provide that such frankness and fairness be a condition of any contract entered into with the employer. However, the provisions for frankness and fairness do not extend to independent review, such as that set out with respect to public servants in the Public Service Security Inquiry Regulations. It is the view of officials that a requirement to this end would represent a substantial extension of government into relations between employer and employee, and that, if independent review in relation to security clearance in the private sector is to be provided, this would not be appropriate in a Cabinet directive and should be achieved through legislation.

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Annex A (Criteria for determining personnel security clearance) has been reexamined with the assistance of the Department of Justice, and the provision in I (b) (vi) reworded with a view of achieving greater precision. It is realized that this provision remains broad in scope and will be criticized as authorizing investigation of persons who are not of legitimate security concern. However, is considered to be required if adequate protection of classified information is to be achieved. ?

In addition to the above, changes in the text of the directive has been reexamined and revised particularly with a view to release to the public.

Financial Considerations

Nil.

Federal Provincial Relations

Nil.

Public Relations Considerations

CD-35 was classified Confidential and has never been made available to the public. However when it was approved, in 1963, its main features were outlined by Prime Minister Pearson and Justice Minister Chevrier in the House of Commons in the debate on the Justice estimates.

The submission examined by Cabinet in April 1977 recommended that consideration be given to making the directive unclassified in keeping with the policy of access to information. The intense interest of the public, Parliament, and the public service in government security policy, including security

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clearance policy, indicates the desirability of such action. It is important that the revised directive be seen as consistent with the government's very positive stance on fairness to employees and citizens. It is therefore suggested that:

- (a) the proposed directive, if approved, be unclassified;
- (b) it be tabled in Parliament, with an explanatory statement along the lines of the draft attached;
- (c) it be sent to all deputy heads with appropriate explanation of its contents, particularly the new questionnaire and fingerprinting requirement.

Caucus Consideration

It is suggested that the directive be made available and explained to Caucus before tabling, and that the nature of the public presentation be outlined to caucus before it is made.

Conclusion

It is important, particularly in view of the widespread interest in security and security screening procedures, that CD 35 be replaced by a document which can be made public and which is better geared to current conditions and situations.

Recommendations

It is recommended that:

- (a) The attached Cabinet directive on personnel security clearance be approved as the statement of government policy and procedure for ensuring

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the loyalty and reliability of persons to be granted access to classified information;

(b) the proposed directive be:

- (i) unclassified;
- (ii) tabled in Parliament, with an ^{atout} explanation statement along the lines of the attached;
- (iii) supplied to all deputy heads with appropriate explanation of its contents, particularly the proposed questionnaire, and the extended fingerprint requirement;
- (iv) supplied to all public service staff organizations with appropriate explanation;
- (v) effective two months after the date of approval, in order to provide time for briefing those concerned, and the printing of the proposed questionnaire; CD 35 to be revoked effective the date of the coming into force of the proposed directive;

(c) the Public Service Commission inform persons entering the public service of the possible requirement for security clearance during their public service careers, and explain the reasons and the procedures involved.

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