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III. Objectives

1. Establishment of Security Review Board

It is recommended that a Security Review Board be established by an Act of Parliament.

2. Although a Security Review Board could be established by an item in the Estimates or, for cases of dismissal of public servants, under subsection 7(7) of the Financial Administration Act, the Security Panel is of the view that insofar as reasonably possible security review procedures should be dealt with under one Act. If a Review Board were to be established under subsection 7(7) of the Financial Administration Act it is the opinion of the Deputy Attorney General of Canada that [REDACTED]

[REDACTED]

[REDACTED] Presumably it would also be necessary to allow the person to rebut any evidence adduced against him, unless the legislation itself made clear that he could not, for security reasons, be shown all of the evidence.

Composition of Board

3. The Royal Commission recommended that the Board consist of a chairman and at least two other members to be appointed by the Governor in Council.

4. Since the number of cases to be reviewed by the Board is unknown but it appears that the volume of cases may exceed that which can reasonably be handled by any one Board it is recommended that the Board be empowered to sit

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in panels of three to hear cases. As a result it is recommended that a permanent chairman be appointed to the Board together with a panel of part-time members, the number of members being not less than three and not more than seven. One of the part-time members will be designated by the Governor in Council as vice-chairman of the Board.

5. Active members of the public service and Government officials would not be eligible for appointment. It is recommended by the Department of Justice that the

6. All members of the Board will require security clearance to Special Activities level prior to appointment, as will any staff appointed by the Board.

General Jurisdiction of Board

7. Government departments will continue to be primarily responsible for matters of security within their own departments. The Board will take the form of a super-structure that will review cases raised by any person described under the heading "Classes of Persons Who May Appeal to the Board" who is of the opinion that he has, for a security reason, been unjustly treated in relation to a matter set out under the heading "Grounds for Appeal". Government departments will have to have exhausted existing security review procedures before a person appealing to the Board should be heard by them, or his case submitted to them.

Decisions of the Board and Governor in Council

8. The Powers of the Board will be purely of an advisory nature (unless it is decided to give it powers of decision in certain areas, e.g. immigration). When the Board reaches a conclusion in relation to a security matter, their advice based on that conclusion shall be communicated

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either to the responsible minister, to the Public Service Commission or an Appeal Board established under the Public Service Employment Act, or to whatever other authority which has powers of final decision in whatever case is being considered.

9. The decision of the appropriate decision-making authority shall be communicated to the person who has made the request for review, and also to any other appropriate minister or official of a department, corporation or agency concerned.

10. A decision of the Governor in Council in respect of any matter relating to security shall be final and there should be no right for review by any court whatsoever.

Classes of Persons Who May Appeal to the Board

11. It is recommended that the following classes of persons be given a right to request a review of their case by the Security Review Board if they consider that their rights or liberties have been infringed on security grounds:

- (a) all persons employed in the public service, including all employees as defined in section 2(1)(f) of the Public Service Employment Act and in section 2(m) of the Public Service Staff Relations Act, as well as all persons employed in crown corporations and other agencies of the federal government;
- (b) persons employed by a corporation with whom the government has entered into a contract (where access to classified material is involved);
- (c) members of the armed forces and of the R.C.M. Police;
- (d) persons who have made application for admission into Canada of a relative pursuant to regulations made under the Immigration Act;

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- (e) a landed immigrant in Canada who has been ordered deported on security grounds;
- (f) applicants for citizenship;
- (g) contracting and other employees.

Grounds for Appeal

12. It will be mandatory that where a decision is made whereby a person will have a right to request a hearing for a reason specified under this heading, the person having this right be notified of the decision and the reasons therefor and of his rights.

(a) Public Servants

It is recommended that a right to a hearing (or review) by the Board be given to any public servant where, for security reasons, he has been

- (i) dismissed or released from the service;
- (ii) suspended from the service; or
- (iii) demoted within the service or appointed to a position with a lower maximum rate of pay;
- (iv) transferred within the public service;
- (v) denied promotion;
- (vi) denied security clearance after appointment.

The Public Service Commission recommends that where a person employed in the public service has a right of appeal under section 21 or 31 of the Public Service Employment Act and there is a question of security, a board appointed by the Commission under the authority of the Act is not appropriate to hear an appeal in relation to the matter, and the matter should therefore be referred to the Security Review Board for review and advice. (The Commission has further recommended that it be consulted during the drafting of the legislation in order that the most effective relationship between the Security Review Board and boards of appeal

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established under the Public Service Employment Act might be clearly reflected in the legislation.)

(b) Persons Employed by a Corporation with Whom Her Majesty Has Entered into a Contract

It is recommended that a right of a hearing (or review) by the Board be given to any person employed by a corporation with whom Her Majesty has entered into a contract where, for security reasons associated with that contract, such person has been

- (i) dismissed by the corporation;
- (ii) suspended by the corporation;
- (iii) demoted within the corporation; or
- (iv) denied a promotion, or is transferred for security reasons.

(c) Members of the Armed Forces and the R.C.M.P.

It is recommended that a right of a hearing (or review) by the Board be given to any officer or man of the armed forces or the R.C.M.P. where, for security reasons, he has been

- (i) dismissed from the armed forces or R.C.M.P.;
- (ii) suspended by the armed forces or R.C.M.P.;
- (iii) demoted within the armed forces or R.C.M.P.;
- or
- (iv) denied a promotion.

(d) Persons Who Have Made Application for Admission Into Canada of a Relative Pursuant to Regulations Made Under the Immigration Act

It is recommended that a right of a hearing (or review) by the Board be given to such a person where there has been a refusal, on security grounds, to approve the application for admission. It is for consideration whether the Immigration Appeal Board should continue to have jurisdiction to deal with matters relating to security in such cases.

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(e) Applicants for Citizenship

It is recommended that a right of a hearing (or review) be given to such a person where the Minister responsible for citizenship is, for security reasons, considering refusal to grant a certificate of citizenship to him.

Hearing of Appeals

It is recommended that there be no right to confront or to cross-examine witnesses appearing before the Board but that the Board may direct any questions to witnesses.

It is further recommended that the Board may hear any evidence in the absence of the appellant and his representative and that only such portion of any evidence so heard may be disclosed to the appellant or his representative as, in the opinion of the Board, will not jeopardize any source of security information that should, in the interest of the safety of Canada or any state allied or associated with Canada, be concealed.

The rules of procedure to be followed by the Board shall be enacted by the Board with the approval of the Governor in Council, but the Board shall act in camera.

Powers of Governor in Council

The Governor in Council should be empowered to direct that any case or class of cases involving a matter of security be reviewed by the Security Review Board.

Consequential Amendments

(a) Financial Administration Act

Subsections 7(7) and 7(8) of the Act, relating to dismissal from the public service will be repealed since the subject matter of these subsections will be embodied in the proposed legislation.

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(b) Public Service Employment Act

Sections 21 and 31 of the Act will require amendment in order to provide for review by the Security Review Board in the cases referred to in paragraph (a) under the heading "Grounds for Appeal".

(c) Public Service Staff Relations Act, and Board

Regulations with Regard to Adjudicator

As grievances against dismissals and suspensions are dealt with by Adjudicator appointed by the Public Service Staff Relations Board, it is recommended that the Treasury Board Staff be consulted during drafting to determine whether amendments to the Public Service Staff Relations Act and Regulations may be necessary.

(d) Immigration Appeal Board Act

Certain sections of the Act may have to be amended as a result of the proposal contained in paragraph (d) under the heading "Grounds for Appeal", and as a result of the substantive proposal made below for amendments to the Immigration Act and Regulations.

(e) Immigration Act and Regulations

It is recommended that consideration be given to amending this Act to provide that where

- (i) a person who has been allowed to enter and remain in Canada as a non-immigrant and who is applying for landing, or

- (ii) a person who is applying for landing at a Canadian port of entry,

is the subject of an inquiry under the Act, and the Commissioner or Assistant Commissioner of the Royal Canadian Mounted Police provides the Special Inquiry Officer conducting the inquiry with a sworn document stating that on the basis of confidential information or material in the possession of the Royal Canadian Mounted Police the

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Commissioner or Assistant Commissioner is of the opinion that the person who is the subject of the inquiry is a person described in one or more of paragraphs 5(1), (m) or (n) of the Immigration Act, the Special Inquiry Officer shall accept such statement as prima facie evidence that the subject of the inquiry is a prohibited person.

Such an amendment is proposed in order that it will not be necessary to disclose sensitive security information to Special Inquiry Officers in order to obtain deportation orders. The relevant information would of course be made available to the Security Review Board if an appeal were made to the Board by the person who is ordered deported as a result of the document provided by the Commissioner or Assistant Commissioner of the Royal Canadian Mounted Police.

(f) National Defence Act

Several sections of the Act may require amendment as a result of the proposals contained in paragraph (c) under the heading "Grounds for Appeal".

(g) Canadian Citizenship Act

An amendment may be required to the Act to provide that the Governor in Council may, in his discretion, order that any person not be granted a certificate of citizenship if, upon a report from the Security Review Board, he is satisfied that such person is a security risk.

Recommendation

It is recommended that authority be given to instruct the Department of Justice to prepare the necessary legislation for the purpose of having the above proposals enacted during the current session of Parliament.

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