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SECRET

Ottawa 4,

MEMORANDUM TO THE CABINET

TITLE - The Security Review Board Act

BACKGROUND

This document has been prepared as a result of the report of the Royal Commission on Security in the Public Service which was submitted to the Governor General in Council on the 23rd day of September, 1969. The recommendations of the Royal Commission were reviewed and discussed at a meeting of the Interdepartmental Security Panel on November 3rd, 1969. The contents of this document are based upon the recommendations of the Interdepartmental Security Panel and briefs submitted to the Panel by the Public Service Commission, the Royal Canadian Mounted

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Cabinet Document # _____ *111C*

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AVIS DE DÉCLASSIFICATION

Document du Cabinet n° _____ *111C*

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OBJECTIVES

Establishment of Security Review Board

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

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 in so far as reasonably possible security review procedures

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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 problems might well be encountered relating to the requirement to give a person subject to an inquiry "an opportunity of being heard". The principle of natural justice might be invoked unless the person subject to an inquiry were given all of the facts of the case alleged against him, in which circumstances sensitive security information and sources of information could be seriously impaired. Presumably it would also be necessary to allow the person to rebut any evidence adduced against him.

Composition of Board

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.

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 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.

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 chairman of the Board be a superior court judge or a leading member of the legal profession.

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General Jurisdiction of Board

Government departments will continue to be primarily responsible for matters of security within their own departments. The Board will take the form of a superstructure that will hear appeals from 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".

Decisions of the Board and Governor in Council

The powers of the Board will be purely of an advisory nature. When the Board reaches a decision in relation to a security matter, that decision shall be communicated to the Governor in Council for whatever action, if any, is deemed advisable by the Governor in Council. The decision of the Governor in Council shall be communicated to the person making the appeal and to the appropriate Minister or official of the corporation concerned.

The decision of the Governor in Council in respect of any matter relating to security shall be final and there shall be no right of review by any Court for any reason whatsoever.

Classes of Persons Who may Appeal to the Board

It is recommended that the following classes of persons be given a right of appeal to the Security Review Board:

- (a) members of the public service,
- (b) persons employed by a corporation with whom the government has entered into a contract (where access to classified material is involved),

4 . . .

- (c) members of the armed forces,
- (d) persons who have made application for admission into Canada of a relative pursuant to regulations made under the Immigration Act,
- (e) persons who have been allowed to enter and remain in Canada as non-immigrants and who apply for landing,
- (f) persons who apply for landing at Canadian ports of entry, and
- (g) applicants for citizenship.

Contrary to the recommendation of the Royal Commission, it is recommended that no special provision be placed in the legislation in relation to such persons as consultants and university faculty members since such persons working under a service contract with Her Majesty do not constitute a serious security problem.

Members of the Royal Canadian Mounted Police should not have a right of appeal to the Security Review Board. The Royal Canadian Mounted Police Act is comprehensive in scope since the Royal Canadian Mounted Police provide the security service of the Government of Canada "it would be unwise in cases of suspensions, transfers, demotions and dismissals on security grounds to have the cases of Royal Canadian Mounted Police members dealt with other than in accordance with the Royal Canadian Mounted Police Act which is quite explicit and provides all necessary safeguards." (From brief submitted by Royal Canadian Mounted Police).

Grounds for Appeal

It will be mandatory that where a decision is made whereby a person will have a right of appeal for a reason specified under this heading, the person having the right of

appeal be notified of the decision and the reasons therefor and of his rights of appeal.

(a) Public Servants:

It is recommended that a right of appeal to the Board be given to any public servant where, for security reasons, he has been

- (i) dismissed from the service;
- (ii) suspended from the service; or
- (iii) demoted within the service.

The Public Service Commission recommends that where a public servant has been denied a promotion for security reasons, a board appointed by the Commission under section 21 of the Public Service Employment Act is not appropriate to hear an appeal in relation to the matter. It is proposed that whenever a public servant has been denied a promotion for security reasons, that person shall have a right of appeal to the Security Review Board.

Where an appeal is made to the Security Review Board as a result of dismissal, suspension, demotion or denial of promotion of a public servant, no action may be taken by any board established by the Commission to deal with any other matter relating to the dismissal, suspension, demotion or denial of promotion until the decision of the Governor in Council is conveyed to the Commission. Where the Governor in Council decides that the original decision was justified for security reasons the Commission, upon being notified of that decision, shall take no further action with respect to the person who appealed to the Security Review Board. Where the Governor in Council decides that the original decision was not justified on the basis of security, the person who

appealed, upon being notified of that decision, may proceed to appeal any other grounds upon which the original decision was based in accordance with section 21 or 31 of the Public Service Employment Act, as the case may be.

It is to be noted that a person who is transferred within the public service for security reasons shall not have a right of appeal to the Security Review Board.

(b) Persons employed by a Corporation with whom Her Majesty has entered into a Contract:

It is recommended that a right of appeal to 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; or
- (iii) demoted within the corporation.

It is to be noted that a person who, for security reasons, is denied a promotion or is transferred within the corporation shall not have a right of appeal to the Security Review Board.

(c) Members of the Armed Forces:

It is recommended that a right of appeal to the Board be given to any officer or man of the armed forces where, for security reasons, he has been

- (i) dismissed from the armed forces;
- (ii) suspended by the armed forces; or
- (iii) demoted within the armed forces.

It is to be noted that an officer or man of the armed forces who, for security reasons, is denied a promotion or is transferred within the forces shall not have a right

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of appeal to the Security Review Board.

- (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 appeal be given to such a person where there has been a refusal, on security grounds, to approve the application for admission. The Immigration Appeal Board would no longer have jurisdiction to deal with matters relating to security in such cases.

- (e) Persons who have been allowed to enter and remain in Canada as non-immigrants and who apply for landing:

It is recommended that a right of appeal be given to such a person where he has been ordered deported for security reasons. The Immigration Appeal Board would no longer have jurisdiction to deal with matters relating to security arising in such cases.

- (f) Persons who apply for landing at Canadian ports of entry:

It is recommended that a right of appeal be given to such a person where he has been ordered deported for security reasons. The Immigration Appeal Board would no longer have jurisdiction to deal with matters relating to security arising in such cases.

It is to be noted that it is proposed that the Immigration Appeal Board will retain jurisdiction to hear appeals from persons who have obtained landed immigrant status under the Immigration Act but have later been ordered deported. This results from the following recommendation contained in the Royal Commission Report:

"Persons who have already been formally admitted as landed immigrants should not be subject to deportation on security grounds without full judicial

appeal before a body such as the Immigration Appeal Board."

(g) Applicants for citizenship:

It is recommended that a right of appeal be given to such a person where the Minister responsible for citizenship has, for security reasons, refused to grant a certificate of citizenship to him.

Hearing of Appeals

It is recommended that there be no right 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.

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 will be repealed since the subject matter of these subsections will be embodied in the proposed legislation.

(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) Immigration Appeal Board Act

Section 17 of the Act will be amended as a result of the proposal contained in paragraph (d) under the heading "Grounds for Appeal".

Section 11 of the Act will be amended as a result of the proposals contained in paragraphs (e) and (f) under the heading "Grounds for Appeal".

Several other amendments to the Act will be required as a result of the proposals referred to in this paragraph and as a result of the substantive amendment proposed below to the Immigration Act.

(d) Immigration Act

It is recommended that this Act be amended to provide that where

- (1) 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 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 is 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.

(e) 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".

(f) 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.