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June 2, 1961.

MEMORANDUM TO THE CABINET:

Tomasz Biernacki

Tomasz Biernacki, a Polish engineer came to Canada in May, 1960, and subsequently applied for and was accorded the status of "landed immigrant" which, generally speaking, entitled him to remain in Canada and eventually to apply for Canadian citizenship. He was arrested on April 9 by the R.C.M. Police and charged on five counts under the Official Secrets Act which related to gathering information directed towards setting up an espionage ring in Canada. The preliminary hearing was concluded May 25 with a decision by the magistrate that the evidence adduced was insufficient to bring Biernacki to trial. As soon as he was discharged he was re-arrested on a preferred indictment which was issued by the Attorney-General of Quebec on the representations of Mr. Fulton.

Biernacki was arraigned on Friday morning June 2. The judge held that, unless the defence requested speedy trial, the trial should be by jury and take place at the fall assizes. The judge also set bail at \$4000, but the defence has not yet applied for Biernacki's release on bail.

The Department of Justice decided that the charges against Biernacki were warranted on the strength of a document carried on his person, two statements which he made to the R.C.M. Police and other incidental evidence. On the preliminary inquiry, however, the two statements were rejected by the magistrate on the ground that they had not been proved to be voluntary statements in point of law. The magistrate, therefore, considered the case on the basis of the remaining evidence particularly the document above referred to and he reached the conclusion that the kind of information Biernacki had been gathering, since it was not of an official or secret nature, was not the kind of information envisaged by the Official Secrets Act. This was of course a straight question of law. The Department of Justice anticipated this decision, from the magistrate's attitude throughout the preliminary inquiry, and considered that it was too narrow an interpretation of the Official Secrets Act. The Minister of Justice, therefore, asked the Attorney-General of Quebec for a "preferred indictment" which would have the effect of requiring Biernacki to stand trial notwithstanding he might be discharged by the magistrate. The preferred indictment

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was issued the day before the magistrate discharged Biernacki and it charges Biernacki with the same offences on which he was before the magistrate. In asking the Attorney-General of Quebec for the preferred indictment the Minister of Justice stated that, in his opinion, the case was too important and the issues as to voluntariness of the statements and whether the information in question was of the nature envisaged by the Official Secrets Act were too close to be disposed of at the preliminary inquiry stage and the case should go to trial.

By way of brief summary it may be said that, in the statements given by Biernacki to the R.C.M. Police he related that, when about to leave Poland for Canada, he had, at the request of Polish Officials, undertaken certain missions which included what he understood to be work in connection with "the organization of a network to conduct espionage or intelligence". The document from Biernacki's person contained, besides an appraisal of his prospects as an engineer, a list of persons mostly resident in and around Montreal with comments on their personal characteristics such as homosexual tendencies or connection with "security" and comments as to their possible usefulness presumably for intelligence purposes.

The Polish Government has made strong representations to me and to officials of the Department of External Affairs on grounds of (a) Biernacki's innocence as established by the preliminary hearing, and (b) the adverse effect which the further prosecution of this case will have on Canadian-Polish relations. The Polish representatives have argued that at the conclusion of the preliminary hearing the Government should have intervened, not to press on with the prosecution, but to confirm Biernacki's release. In addition to arguing these points forcefully, the Polish authorities have drawn a parallel with the case of Tadeusz Koyer, the Canadian of Polish origin who was arrested in Poland last year and was eventually released, after lengthy investigation, because there was no conclusive case against him. It has been pointed out to us that the favourable results arose from interventions by the Ministry of Foreign Affairs in the interests of Polish-Canadian relations following strong Canadian representations.

Canada's relations with Poland have developed satisfactorily in the last several years; since December 1960 this process has been greatly aided by the return of the Polish treasures. It has been the Government's aim to develop friendly contacts with Poland wherever possible in order to strengthen the elements in that country which desire greater independence from the Soviet Union. The Polish regime is continuing to maintain a relatively independent attitude and Western efforts to support this have, we believe, been helpful. We have, moreover, recently initiated discussions in Warsaw towards the settlement by Poland of Canadian claims for compensation for property nationalization. These negotiations are bound to be

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difficult and it has been our aim to create a generally favourable atmosphere in which they may proceed. In addition, I am concerned lest the appearance of harsh Canadian Government action against Biernacki might lead the Polish authorities to take retaliatory action against Canadian nationals in Poland.

A further factor in our relations with Poland is commercial: negotiations have just been completed for the sale of over \$8 million worth of wheat to Poland, with a possibility of a further sale of the same amount. Over the last four years Poland has shown itself to be a good and consistent purchaser of Canadian grains. Furthermore, Canada and Poland share responsibilities with India on the International Supervisory Commissions in Indochina. In the difficult negotiations currently going on in Geneva, it is in our interest to be able to work effectively with the Polish representatives, and I am concerned that difficulties in Canada over the Biernacki case may make our position increasingly awkward and may, in fact, affect the prospects of a settlement of these important problems.

At this stage there are several courses which the Government may take. The first would be to take no action to influence the course of justice now in train. Biernacki would come to trial and whether or not he were found guilty, there would be very serious strains on Canadian-Polish relations, these being greater, of course, if he were found guilty and sentenced to imprisonment in Canada.

The second alternative would be for the Government, basing itself on the factors outlined above, to decide to take positive action to withdraw the charges against Biernacki. In point of law the prosecution could be terminated by the Attorney-General of Quebec entering a nolle prosequi and although he would presumably do so at the instance of the Minister of Justice, he has not, of course, been approached in this regard and it is not known what attitude he would take publicly or privately in explaining such action, although in the face of criticism he would doubtless place the responsibility on the federal authorities. Provided the issue of responsibility were clear, this factor would probably not create difficulties.

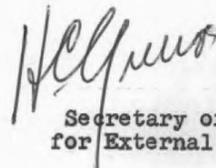
Government action to withdraw the charges could be explained to the public in the following manner: when the preliminary hearing was concluded, the full review of the case had to be undertaken and it was desired to hold Biernacki in Canada; the procedure of preferred indictment was the only method by which this could be done; the review now having been completed and not having elicited additional useful evidence, it has been decided not to proceed with the prosecution.

In considering whether the factors adduced above in regard to the importance of Canadian-Polish relations require that action should be taken to withdraw the charges against Biernacki, it is necessary to remember that the Department of Justice remains convinced that Biernacki was engaged in espionage activities and that

the evidence warranted sending him to trial and that we cannot allow the Polish authorities to have any doubts about this conviction in spite of (a) the result of the preliminary hearing and (b) a Government decision to drop the charges. In order to establish this point clearly with the Poles it might be desirable first to secure from them an assurance that Biernacki would leave this country immediately upon being freed. From my conversation with the Polish Chargé I think this can be done. Moreover, since a member of the Polish Embassy has been implicated in the case in such a way that if Biernacki were convicted by the court it would be necessary to declare him (the Embassy official) persona non grata, we could also inform the Poles, if adequate evidence of such implication could be passed to them, that our conviction as to Biernacki's guilt extends to the implication of the Embassy official and that we would expect them to remove this official from Canada. We would give no publicity to this expulsion and would propose to allow him a period of say, two months, in which to leave, in order that the connection between the two would not come to the attention of the press and thereby further damage Canadian-Polish relations. At the same time we would give the Polish authorities a solemn warning that we will not countenance the continuation or resumption of the activities which Biernacki was engaged in, and any further activity of this sort is certain to have a most serious effect on our relations. Although an arrangement in these terms would affect our relations, it would combine a consistency with Government actions thusfar with a frank reaction to serious representations made by the Polish Government. I consider that this could be turned to useful advantage in respect of several matters of current international concern.

It is, therefore, for decision whether

- (a) no action should be taken to influence the prosecution of the Biernacki case, or
- (b) action should be taken to withdraw the charges against Biernacki, it having previously been arranged with the Polish authorities that Biernacki should leave Canada immediately; that (if sufficient evidence can be released) his intelligence contact in the Polish Embassy should also leave shortly without publicity; and that this should be accompanied by a strict warning to the Polish authorities as to continuation or resumption of similar activities in the future.



Secretary of State  
for External Affairs