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SECRETARY OF THE  
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MEMORANDUM FOR MR. ROBERTSON:

Mr. Orlikow's Motion for the Production of Security Directives

I have studied, as has Mr. Beavis, Mr. Donald S. Macdonald's report to the Prime Minister on the debate of Mr. Orlikow's Motion No. 123 of June 1st,

"that an Order of the House do issue for a copy of all government statements and directives to government departments during the past year regarding security procedures and investigations".

While I am in sympathy with some of the views which Mr. Macdonald expresses concerning the circumstances surrounding the debate, I feel that there are a number of points which he raises, as well as a number which he may not have been in a position to raise, which require clarification.

You will recall that, when the revised Cabinet Directive on Security was prepared last autumn, the Security Panel as well as the Cabinet Committee on Security and Intelligence were unanimously of the view that it would not be in the public interest to table it in Parliament. When the Motion was introduced on June 1 of this year, I prepared, at your suggestion, a confidential memorandum setting out the reasons why members of the Security Panel did not consider it in the public interest to publish the Directive. You, and subsequently the Prime Minister, agreed with these recommendations,

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009076

AGC-1292\_0001

-2-

and the Prime Minister confirmed this view at a meeting in his office on June 23, when he said the government had no alternative but to refuse to accede to the Motion and permit it to come to a vote. While the policy was therefore clearly established, it was also clear that some of the most persuasive reasons for not making the Directive public did not lend themselves to public debate. I therefore prepared, and you slightly revised, a statement to be made in the House by the Prime Minister or Mr. Favreau setting out, to the extent that was possible, the reasons why the Government could not respond to Mr. Orlikow's Motion. As it had been agreed that Jack Davis would carry the debate, I gave him this draft statement on June 25 and also showed him, as we had agreed, the confidential memorandum referred to above. I also gave him a copy of Cabinet Directive No. 35. He indicated that this material would be adequate to carry the debate.

Debate on the Motion began on July 2, at which time Mr. Favreau made the statement to which I have referred. Debate continued on July 9, with Mr. Macdonald speaking for the Government, apparently in place of Mr. Davis. In reply to a question by Mr. T.C. Douglas concerning an employee's privileges in relation to the Security Review Board, Mr. Macdonald stated that the employee "will have the right to appear before this particular board and put his best case forward. It is also my understanding that he will have the benefit of counsel in defending himself in what is essentially not a legal proceeding but one in which considerations of a legal character may arise". In reply to a further question as to whether these provisions were now in effect, Mr. Macdonald went on to say that he was speaking "not only of the future, but of the present and what dates back to October 25".

Mr. Macdonald was clearly mistaken in these statements, as neither the Directive itself nor the statements which the Prime Minister and Mr. Chevrier made on October 25, 1963, had indicated that the review system provided for an employee to appear before the

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AGC-1292\_0002

-3-

Board, or that he could be accompanied by counsel. In a subsequent discussion with Mr. Macdonald on July 23, Mr. Beavis pointed out that these statements had been made in error, and suggested that they be corrected when debate on the Motion was resumed in the House. Mr. Macdonald agreed that this must be done, but suggested, in a letter to Mr. Beavis dated July 23 that Mr. Orlikow might be prepared to withdraw the Motion if the Government were prepared to make public "a further directive setting out the procedure in security cases, but not containing any confidential information". He also suggested that the question of representation by legal counsel in the review procedure be reconsidered.

In a discussion with Mr. Beavis prior to your going on leave, and with me on your return, you indicated that it would be undesirable to issue a new directive or table a portion of the present Directive, but that we might consider issuing a statement or paper describing the review procedure in somewhat more detail than had been done in the Prime Minister's statement of October 25 last. As to the question of counsel, we reviewed the arguments against such a provision and agreed that they were still valid. They are, essentially, that, as personnel security is a part of good personnel administration, and in no sense a justiciable matter, the addition of judicial or quasi-judicial procedures to the review which had been devised could only lead to demands for further such procedures, particularly confrontation by "accusers" and the subsequent loss of essential sources of security information. In addition, the judgment of an employee's loyalty and reliability is and must be a matter between an employee and his employer, and cannot be satisfactorily settled through persuasive argument by counsel on an employee's behalf. Further, the provision of counsel in security cases would lead to demands for similar provisions in other aspects of personnel administration, the results of which would be chaotic.

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AGC-1292\_0003

-4-

There was no further debate of Mr. Orlikow's Motion until it was brought to a vote on September 17. In the interim, Mr. Beavis and I had informed Mr. Macdonald that those members of the Security Panel whom we had been able to consult (yourself, Commissioner McClellan, Jim McCardle and Tom MacDonald) had confirmed the earlier views of the Security Panel that neither the Directive nor any portion of it should be made public and that no provision for counsel should be made in the review procedure. Mr. Macdonald was asked if we could assist him in providing further notes for debate, and he informed us that he wished nothing further. He would merely correct the mis-statements of fact which he had made on July 9.

During this period, consideration was being given the means by which the security review procedure might be more fully described in Parliament so as to meet the request of members of the New Democratic Party, without making public any portion of the Directive itself. It will be recalled that at this time, and particularly on August 27, the Minister of Justice was under pressure in the House to reveal whether Calvin Macdonald, a participant in the "blood-throwing" incident, had been a secret agent of the R.C.M. Police. Mr. Favreau had replied that "the government has consistently followed a policy of complete reticence concerning security work". In light of this statement by his Minister, Commissioner McClellan very strongly recommended that the Government do not weaken the Minister's position by making public in detail at this time a central aspect of our security procedures, namely the review procedure. You and I discussed this, and agreed that the time to make such a statement was not propitious. In addition, it was felt that, the Motion being for the production of "all government statements and directives...regarding security procedures and investigations" -- a very broad request, the full implications of which could not be entirely foreseen at the time -- it was more desirable to face a vote on it, with a high probability of defeating the Motion, than to permit it to be withdrawn on the basis of a

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AGC-1292\_0004



-5-

"deal" such as that proposed by Mr. Brewin, which would almost certainly have put the Government, and future governments, in a defensive position in respect of security directives of all kinds. The Motion therefore came to a vote on September 17, and was negatived, 131 votes to 14.

Concerning the handling of the debate itself, there are a number of points which should be made. I feel very strongly that Mr. Macdonald was asked to "pinch-hit" in a situation for which he was ill-prepared and about which he was not fully briefed, if at all. It was not until a few days ago that I was in the least aware that Mr. Macdonald had not in fact read the Cabinet Directive on Security, nor had he been briefed on the Government's position by Jack Davis or Mr. Favreau when the carriage of the debate was handed over to him, as it apparently was. I personally take some responsibility for this failure, in not having gone further in making certain that Mr. Macdonald was fully aware of the background circumstances and complexities of the matter. A difficulty which arose, and which is still present, lies in the question of the extent to which Parliamentary Secretaries are, or should be, made aware in continuity of the Government's desires and intentions in the formulation and maintenance of its policies. I am convinced that, in this instance, Mr. Macdonald was given a very difficult job to do and insufficient tools to do it with, and I strongly suspect that his apparent disappointment with the outcome of the debate reflects this inadequacy.

I cannot agree, however, with Mr. Macdonald's view that "the advantage which was gained by our public announcement last November has now been entirely dissipated by the response which we made to this particular motion". Surely the gain lies not in the announcement but in the effectiveness of the procedures which were announced, and in the fact that, since their introduction, not a single employee has been dismissed

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AGC-1292\_0005

-6-

from the public service on security grounds. True, Messrs. Douglas, Brewin and Orlikow have expressed their dissatisfaction with the procedures which the Government put into effect late last year and their refusal to make them public in detail. But none of them has raised, in the House or elsewhere, a case of an employee who felt he had been unfairly treated as a result of those new procedures. In fact, the very strong impression we have, from the disposition of the cases on which we have been consulted, and from discussions with numerous departmental and agency security officers, is that the new procedures are working very well. As is suggested by the fact that no case has yet been brought before the Security Review Board, departments are taking much greater care in assessing adverse security information about their employees, and are consulting the secretariat of the Security Panel on difficult cases to a much greater degree than in the past. As a result, we feel that better distinctions are being made, leading to better decisions -- or at least to decisions which do not have the effect of shattering careers and reputations. It may well be that one or another of these decisions will eventually lead to a situation in which we lose some secrets and have to prosecute a spy, but for a variety of reasons I feel, and I believe the Government does also, that this is a risk we must and should accept.

I do not feel that I can comment usefully on Mr. Macdonald's remarks concerning his relationship with the R.C.M. Police, except to emphasize what I have said earlier about the somewhat anomalous position in which a Parliamentary Secretary such as that to the Minister of Justice must find himself. No doubt part of Mr. Macdonald's difficulty with the R.C.M. Police springs from his relationship with them as a Member of Parliament acting in behalf of his constituents, a difficulty which is shared by all other Members. In his capacity as Parliamentary Secretary, however, I do feel that, if he is to be given responsibility in the House and elsewhere

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AGC-1292\_0006

-7-

to deal with matters as difficult and sensitive as those arising from problems of internal security, provision must be made to ensure that he is aware of developments and has a continuing working relationship with senior officers of the R.C.M. Police as well as with other officials concerned. Although it is perhaps presumptuous of me to make this suggestion, I do recognize that in present circumstances the Minister of Justice has a very heavy burden indeed, and is perhaps unable to devote as much time as he would wish to matters of security. We in this Office will, of course, share as much of that particular burden as we are able, but I would hope it could be within a better organized and understood framework than we appear to have at present.

The Orlikow Motion having been defeated by a very sizeable vote, I believe the Government is now in a position to meet the request which Mr. Brewin made, and which Mr. Macdonald supports, for a rather more detailed description of the security review procedures. I would suggest that, should the question be raised again during the forthcoming debate on the estimates of the Department of Justice, the Minister might expand somewhat on the description of the review given by the Prime Minister on October 25 last, and indicate at the same time that the system appears to be achieving its purpose. As I mentioned to you, we are now preparing such a statement for consideration by yourself, the Prime Minister and Mr. Favreau.

  
D.F.W.

October 5th, 1964.

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