

Copy on S-1-2

S-1-1(2)-1

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

CONFIDENTIAL

July 8th, 1966.

A meeting of the Cabinet Committee on Security and Intelligence was held on Monday, June 27th, 1966, at 4:30 p.m. in Room 340-S, Centre Block.

PRESENT:

- The Rt. Hon. L. B. Pearson
Prime Minister, (Chairman)
- The Hon. E. J. Benson
Minister of National Revenue,
- The Hon. P. T. Hellyer
Minister of National Defence,
- The Hon. L.T. Pennell
Solicitor General.

ALSO PRESENT:

- Mr. R. G. Robertson
Secretary to the Cabinet,
- Mr. Marcel Cadieux
Under-Secretary of State
for External Affairs,
- Mr. E. B. Armstrong
Deputy Minister of National Defence,
- Mr. G. W. Hunter
Deputy Minister of Defence Production,
- Asst. Commissioner W. H. Kelly
Royal Canadian Mounted Police,
- Mr. T. D. MacDonald
Department of Justice,
- Mr. J. J. McCardle
Department of External Affairs,
- Mr. D. F. Wall
Privy Council Office, (Secretary)
- Mr. P. M. Pitfield
Privy Council Office. (A/Asst. Secretary)

I. General Inquiry into Security Methods and Procedures

1. The Committee had before it a draft Memorandum for the Cabinet entitled "General Inquiry into Security Methods and Procedures" dated June 17, 1966.
2. At the request of the Prime Minister, the Chairman of the Security Panel (Mr. R. G. Robertson) reviewed the main points contained in the Memorandum before the Committee for discussion.
3. Mr. Robertson said that in drafting the proposed Terms of Reference for the inquiry the Security Panel had been very much aware of the danger of converting the inquiry into a Court of Appeal. He said that for this reason the Memorandum emphasized that the inquiry should

005496

CONFIDENTIAL

- 2 -

look backward principally in order to enable it to recommend improvements in security methods and procedures in the future. Another point which the Security Panel had considered to be of prime importance was that the proceedings of the inquiry should be held in camera. Bearing in mind the experience of the Spencer Inquiry and the Munsinger Inquiry, the Security Panel was convinced that the Terms of Reference for the general inquiry into security methods and procedures should permit the Commissioners no discretion in this regard. If hearings were held in public there would be legitimate demands for representation by counsel which in turn would change the whole nature of the inquiry. Public hearings would adversely affect the lives and reputations of many individuals and would prejudice the atmosphere of trust and confidence which is essential to the operation of security procedures in the personnel relations of government departments and agencies. In speaking of the nature of the Commission and the number of Commissioners, Mr. Robertson stressed the view of the Security Panel that the inquiry should be conducted in the greatest degree on a basis of informality consistent with the fact that security evaluations are not a matter of legal proof but a matter of judgement. He said that the inquiry would have to be on its guard against demands to look into particular cases made by outside parties with a view to stirring up trouble. The whole question of representations by public organizations would have to be considered, the view of the Security Panel being that submissions should be made first in writing and that any subsequent hearings should be in camera in order to discourage sensationalism. Mr. Robertson said that a third point of great importance in setting up the inquiry would be to safeguard information obtained from other countries and preserve Canada's relations with security agencies abroad. Given that the inquiry would go on for at least 18 months to 2 years, there would be a continuing source of strain on Canada's international security relationships.

4. The Committee then passed to a consideration of the recommendations set out at the conclusion of the Memorandum:

"(a) that the Commission should be given a broad mandate to examine security methods and procedures in the application, subject only to the protection of national, international and individual security and rights as set out in detail in this memorandum and in the draft terms of reference, attached."

Under this heading the Committee examined the proposed Terms of Reference for the Commission.

5. The Solicitor General was of the view that paragraph (1) of the Terms of Reference should be broader and more general than proposed. The Prime Minister agreed that "the security of the State" and "the rights of the individual" should be mentioned. The Solicitor General proposed the following wording:

.. 3

005497

AGC-1329_0002

CONFIDENTIAL

- 3 -

"To review the security procedures and practices that have been followed, having regard to the security of the State and the rights of the individual."

Mr. Cadieux suggested that they should be recast in terms as follows:

"to make a full and confidential inquiry into the past and present operation of Canadian security methods and procedures, to advise what security methods and procedures are most effective and how they can best be implemented, to make such reports and recommendations for this purpose as they deem necessary and desirable in the national interest, and in the conduct of the foregoing to have regard to the necessity of (a) maintaining the security of Canada as a nation; (b) respecting the rights and responsibilities of individual persons; and (c) preserving Canadian relations with the governments of other countries."

The Prime Minister suggested, and the Committee agreed, that the words "past and present" ought to be omitted in order to reduce the risk of leading the Commission into a detailed examination of past cases. The Prime Minister further suggested, and the Committee agreed, that the Terms of Reference as proposed in the memorandum should be adjusted in the light of the forms of words proposed by the Solicitor General and by Mr. Cadieux.

6. Paragraph 2 of the Terms of Reference proposed in the memorandum were found to be acceptable by the Committee.

"(b) the Commission be composed of not less than three members, the Chairman to be a Judge of the Superior Court or an outstanding lawyer."

In view of recent controversy concerning the appointment of Judges to Royal Commissions, the Prime Minister suggested, and the Committee agreed, that the specific reference to a Judge should be replaced by reference to "a person learned in the law".

"(c) if possible one of the Commissioners should have had experience in the security field, but, failing this, should be experienced in the workings of the public service."

The Committee agreed to this item, noting that it would be taken into account in the selection of Commissioners but would not be specifically mentioned in the Terms of Reference. Mr. Robertson stated that it was the Security Panel's view that the third Commissioner should be someone associated with liberal views, and the Committee agreed.

"(d) as outlined in the draft Terms of Reference at Annex, the proceedings of the Commission should be held wholly in camera and under the umbrella of all normal security precautions."

.. 4

005498

CONFIDENTIAL

- 4 -

The Prime Minister expressed the view that this requirement should not be specifically stated in the Terms of Reference, although it should be made clear to the Commissioners prior to their appointment. Mr. Robertson stated the purpose of the requirement was to avoid a campaign in the press that would ultimately lead to all the Commission's hearings being held in public. The Prime Minister agreed but pointed out that there were other campaigns, particularly in Parliament, that would be waged against all hearings being held in camera. Mr. Robertson suggested that the Government was in the best position to answer such campaigns, and that by requiring in the Terms of Reference that all hearings be held in camera the whole question would be brought to a head. The Minister of National Defence pointed out that the issue could be avoided by the agreement of party leaders. Mr. Cadieux pointed out that so long as the Commission conducted its inquiry under "the umbrella of all normal security precautions" there would be little that could be said in public. After some discussion, the Prime Minister suggested that some form of words should be found so that all the hearings except those at the beginning and at the end of the inquiry would be held in camera. The Solicitor General said that in addition there could be an undertaking that the substance of the findings would be made public along with certain specific recommendations relating to the public service. The Prime Minister observed that it would be the Solicitor General who would have to consult with party leaders concerning the Terms of Reference, and if they were not willing to accept them as regards in camera hearings the Government would have to fall back on a device such as that suggested by the Minister of National Revenue, namely: that in discussions with Commissioners prior to their appointment undertakings be obtained that all hearings would be held in camera.

"(e) the inquiry should be conducted informally, the research being done by the Commissioners themselves, rather than by a research staff, with formal testimony under oath and with advice of Counsel only when deemed essential by the Commissioners or when requested by persons appearing before the Commission for the protection of their rights and interests."

The Prime Minister observed that it would be an unusual Royal Commission that did not rely upon research done by its staff. Mr. Robertson explained the opinion of the Security Panel that the sensitivity of the subject matter of the inquiry made it desirable that wherever possible it should be handled only by Commissioners. The Prime Minister suggested, and the Committee agreed, that the wording of this item should be changed to read that

"the inquiry should be conducted informally, the research being done by the Commissioners to the greatest possible extent, rather than by research staff, etc."

In this connection, the Solicitor General pointed out that in the United Kingdom the practice had been adopted of naming additional persons to Commissions primarily for the purpose of conducting the research.

.. 5

005499

AGC-1329_0004

CONFIDENTIAL

- 5 -

"(f) the Commission must not be, or be thought to be, a tribunal to review decisions made in individual cases in the past either in the public service or in the defence industry."

Mr. Hunter explained the importance of the allusion to the defence industry where there are some 65,000 persons employed many of whom require security clearances.

"(g) the Commission should not be finally established until Mr. Justice Wells and Mr. Justice Spence have made their reports on the inquiries they are presently conducting into the Spencer and Munsinger cases."

The Prime Minister suggested that, while he was in agreement with this item, it should not be contained in the memorandum as circulated to Cabinet. The Minister of National Revenue expressed the view that in fact all the items (a) through (g) could be removed, the memorandum concluding simply with the recommendation of the Terms of Reference. The Prime Minister was of the view that a little bit more was required than that in the way of recommendations and suggested, with the agreement of the Committee, to omit item (g) and edit items (a) through (f) in the light of the views that had been expressed.

7. The Committee endorsed the recommendations of the Security Panel that a general inquiry into Canadian security methods and procedures be established with terms of reference as revised in light of the Committee's discussion, and agreed that an appropriate recommendation be placed before the Cabinet in the following week, although there should be no public announcement of the terms of reference or the establishment of the Commission until after the departure of the Soviet delegation presently in Canada.

D. F. Wall,
Secretary.

Privy Council Office,
O t t a w a.

005500

AGC-1329_0005