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November 29th, 1967.

SP-232

MEMORANDUM FOR THE SECURITY PANEL:

Hearings in Relation to Dismissals on
Security Grounds

In the amendments to the Financial Administration Act which were assented to on March 1st, 1967, the following sub-sections were included in Section 7 of the Act:

- "(7) Nothing in this or any other Act shall be construed to limit or affect the right or power of the Governor in Council, in the interest of the safety or security of Canada or any State allied or associated with Canada, to suspend any person employed in the Public Service or, after an inquiry conducted in accordance with regulations of the Governor in Council by a person appointed by the Governor in Council at which the person concerned has been given an opportunity of being heard, to dismiss any such person.
- (8) For the purposes of sub-section (7) any Order made by the Governor in Council is conclusive proof of the matters stated therein in relation to the suspension or dismissal of any person in the interest of the safety or security of Canada or any State allied or associated with Canada."

Shortly after the passage of these amendments, the undersigned discussed them with the Assistant Secretary of the Royal Commission on Security with a view to having the Commission examine their implications, particularly in relation to the use of the term "regulations of the Governor in Council", and make such recommendations as seemed appropriate. The Assistant Secretary of the Commission undertook to raise the matter with the Commissioners, and it is understood that this was subsequently done.

On September 25th the honourable member for Carleton placed on the Order Paper Starred Question No. 381 as follows:

- "1. Pursuant to section 7(7) of the Financial Administration Act, as enacted by section 3 of Chapter 74 of the Statutes of Canada 1966-67, has the Governor in Council promulgated regulations providing for the conduct of any inquiry into the dismissal of any public servant in the interest of the safety or security of Canada?"

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2. If so, on what date?
3. If not, what consideration has been given to the matter?"

After consultation with officials of the Treasury Board, the Department of Justice, the Royal Canadian Mounted Police and other departments directly concerned, the following was proposed as a reply, which was made in the House of Commons on November 6th, 1967:

- "1. No regulations have been promulgated, and no case has arisen which would require provision to be made for such an inquiry.
2. Not applicable.
3. As a result of consideration by the officials responsible, the matter was referred to the Royal Commission on Security as one falling within its Terms of Reference and on which it would clearly be desirable to have the advice of the Commission."

Prior to the answer being made in the House of Commons, the undersigned wrote formally to the Assistant Secretary of the Royal Commission on Security indicating the intention to reply to the question in this manner and seeking formal confirmation of the earlier understanding that the Royal Commission would advise on the kind of regulations which might be drafted, taking into account the requirement that such regulations should not lead to the revelation of information which would bring harm to individuals or jeopardize the public interest or the safety or security of Canada. A reply to that letter was subsequently received, indicating that the members of the Royal Commission had agreed that this was a matter which fell within their terms of reference and that their report would contain an examination of the general subject.

As it is probable that circumstances will vary from case to case in those instances where it may be necessary to dismiss public service employees on security grounds, it would be desirable that separate regulations be drawn up in each case in order to meet such variations. On the other hand, the term "regulations" as used in the law tends to imply general regulations which would be applicable in all cases. It is the view of senior officials of the Department of Justice that it would be preferable in terms of traditional legislative practice to devise general rather than specific regulations to deal with this problem. If it is the decision of the government to do so, it will then be necessary to consider carefully the form and content of such general regulations. As it is unlikely that the Royal Commission on Security will make its report until late in 1968, and as it is possible that a case requiring dismissal on security grounds will arise in the meantime, it was considered advisable that the Security Panel examine the matter in the interim with a view to advising the government on the most appropriate course to be adopted.

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As was suggested to the Royal Commission on Security, it is important that regulations drawn up for this purpose do not reveal or lead to the revelation of:

- (a) information which might be damaging to the career or reputation of employees involved; or
- (b) information which might jeopardize the effective conduct of Canadian security operations.

It is therefore for consideration whether adequate and presentable regulations can be drawn up within these limits. Some of the questions which will require to be answered are as follows:

- (a) How to define the phrase "an opportunity of being heard"?
- (b) Should the employee be permitted to cross examine the Commissioner on the information provided in the case?
- (c) Should the employee be permitted representation by Counsel before the Commissioner?
- (d) Should the inquiry be conducted on a confidential basis?
- (e) Should the Commissioner conducting the hearing be provided with all the information relevant to the case (e.g. the R.C.M. Police file on the employee)?

While there are undoubtedly other questions which will require to be answered before it is possible to draft regulations as envisaged by the Act, the Security Panel is asked to consider these and such others as may arise in discussion, with a view to advising the government on such action as it might appropriately take until such time as the Royal Commission on Security has presented a Report on this matter. In this connection, it may be helpful to examine the attached copy of Order in Council P.C. 1957-1389 of October 19th, 1957, setting out regulations for the conduct of a confidential inquiry into the case of an employee of the Canadian Broadcasting Corporation who had at that time been denied promotion on security grounds.

D. F. Wall,
Secretary.

Privy Council Office,
O t t a w a.

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