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(Minutes)

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January 12, 1970

The 84th meeting of the Security Panel was held on Monday, November 3rd, 1969, at 11:00 a.m. in the Privy Council Committee Room.

PRESENT:

- Mr. R.G. Robertson
Secretary to the Cabinet (Chairman)
- Mr. J.K. Starnes
- Mr. K.D. McIlwraith
Department of External Affairs
- Mr. D.H. Christie
- Mr. P.D. Beseau
Department of Justice
- Mr. L. Couillard
- Mr. E.P. Beasley
Department of Manpower and Immigration
- Col. C. MacFarlane
- Lt. Col. A. Laidler
Department of National Defence
- Mr. J.J. Carson
Chairman, Public Service Commission)
- Mr. E.A. Côté
Deputy Solicitor General
- Commissioner L.W. Higgitt
- Assistant Commissioner M. Barrette
Royal Canadian Mounted Police
- Mr. W.R. Martin
Secretary of State Department
- Mr. G.W. Hunter
- Mr. S.M. Jenkyns
Department of Supply and Services
- Mr. D.F. Wall (Secretary)
- Mr. D. Beavis
Privy Council Office

SECURITY REVIEW BOARD

The Security Panel had for consideration a document concerning the recommendations of the Royal Commission on Security in relation to the establishment of a Security Review Board, accepted in principle by the Government, although the "details of the scope, character and operation of the Board may differ in some respects from the Commission's recommendations." Attached to this document were copies of Memoranda prepared by the Department

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of Justice on October 3rd and 10th, 1969, together with "draft Public Service Security regulations under which dismissals on security grounds might be dealt with in relation to Section 7 (7) of the Financial Administration Act." (Document SP 236, October 22nd, 1969, refers).

The Security Panel were asked to consider several questions with regard to recommendations to the Cabinet Committee on Security and Intelligence as to the statutory basis, terms of reference and mode of operation of a Security Review Board raised in the memoranda of the Department of Justice:



The Chairman reminded the Panel that the proposed report to the Cabinet Committee would deal

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with foreseeable policy questions and related methodology, not with the question as to whether a Review Board should come into being. While he thought that the Board might change some aspects of review procedures by coming into being, it was desirable that most of those contained in Cabinet Directive No. 35 should be retained, as to open another course might well present difficulties if departments used its existence to, avoid exercising their own responsibilities. At the moment, the location of the Board was not an issue; however, it was obvious that the Review Board Secretariat should not be related to the Secretariat of the Security Panel, any more than Board members could be employed in other related areas without their disinterest being called into question.

Commissioner Higgitt agreed that the Board could be useful but registered concern with regard to release of all information to the Board and in relation to keeping the number of Board members both reasonably constant as to individuals and small as a group, consistent with efficient functioning. Safeguards for information and delicate sources of the type under which the Royal Commission on Security functioned would be essential, particularly in relation to "third party" information to ensure both security and continuing full cooperation with allied agencies, some of which supplied information (such as that relating to amnesties) for police use only and which would be open to charges of an offence under their own laws if further dissemination were made. Commissioner Higgitt recognized a conflict between such structures and the desire of the R.C.M.P. to make facts more fully available to the Security Review Board than was currently the case with the Immigration Appeal Board, a serious difficulty in the present system.

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Mr. Robertson considered that the Board, under suitable safeguards, could have all available information but would be enjoined not to disclose all that available to it.

Mr. Martin considered that the establishment of the Board would not provide his department with grave problems, nor would it affect the provisions of the Citizenship Act seriously. He considered that the case-load from Citizenship would not be unmanageable.

Mr. Couillard explained that the work increase with regard to immigrants was not known, but likely to be high, and undertook to have his department produce a paper on the point. He felt that establishment of the Board would have considerable impact on the Immigration Act and that there were areas of real difficulty in sorting out the interaction between the proposed Security Review Board and the Immigration Appeal Board as presently constituted. Both the work-load and some conflicts could be resolved if the Review Board were to consider cases referred by citizens acting as sponsors and refused on security grounds; it would remain manageable if broadened to include independent applications in Canada. However, an applicant for landing should have no recourse to the Immigration Appeal Board if the Security Review Board had already ruled him out. Further, as the function of the Review Board was conceived of as advisory, its opinions would, under present legislation, need Ministerial approval and it would be helpful if security cases were considered by the Minister with the advice of the Review Board as more factual information would then be available than was capable of release to the Appeal Board. By referring security cases to the Review Board, rather than to the Appeal Board, potential areas of conflict could be removed and current inhibitions

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on dissemination of sensitive information which sometimes resulted in uninformed and unacceptable Appeal Board decisions would be lessened, if not removed entirely.

During the discussion, the following principal points emerged:

- (a) The R.C.M.P., while prepared to continue the use of existing Cabinet Directive No. 35 procedures, felt that regular and civilian members had adequate protection under their Act, and that the Board should consider only security cases involving public servants, unless the Board considered regular and civilian members' cases prior to the exercise of the right of the Commissioner under the R.C.M.P. Act to transfer demote, suspend or dismiss members, who had entrenched rights of appeal and redress. Particularly within the security service it was considered essential to preserve the capacity to act speedily to ensure continuing security within the Directorate.

Public Servants

- (b) While the Royal Commission on Security recommended broad terms of reference for the Board, it was argued that, if special legislation were contemplated, the Security Panel should advise that the Board should not hear cases involving transfer, denial of promotion or apparent inhibition of career prospects, as to do so would go beyond the privileges embodied in the Public Service Staff Relations Act and would, in effect, afford security cases better treatment than that accorded individuals appealing on other questions. The real issues affecting individuals were demotion or dismissal; if this base were broadened, some

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foresaw that "paranoids" would clog the Review Board machinery with frivolous or imagined security complaints. With regard to suspension, it was felt that because a financial penalty could be involved, the period of suspension should be as brief as possible. Some benefit might result from linking this provision with the wording relating to the adjudication process, where a finite period was stipulated.

- (c) Although a department might have to approach the Board with regard to suspension, the course was considered unlikely. However, it was conceivable that the Board could automatically have cases raised by individuals referred to it by Departments; it was thought that, by this stage, existing review procedures would have been exercised and exhausted. The intent of the Royal Commission appeared to have been to provide the individual, not the department, with further recourse.
- (d) Public discussion, whether the Board was set up by an Act or by Order in Council, would inevitably result, as was implicit in the Report of the Royal Commission. However, as the function of the Board would be advisory, it was thought that recommendations would be less likely to be subject to scrutiny by the courts, in which the persistent confusion between the legal/evidentiary process and the administrative necessity of coming to decisions on information which would not be considered "evidence" by the courts had not been resolved. The Board would have to be prestigious, empowered to call for further information if it saw the need and ruling it irrelevant, if the source could not be plumbed. It would be necessary, if an Act

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were used to establish the Board, to stipulate those circumscriptions within which the Board would operate so that reasons for secrecy, protection of sensitive information and the lack of confrontation and cross-examination could be demonstrated in debate as not interfering with the concept of a fair hearing and "natural justice".

After further discussion the Security Panel agreed:

- (a) that the R.C.M.P., the Public Service Commission, the Department of Manpower and Immigration and the Department of State be asked to forward to the Secretary papers setting out their views as to the modifications which might appropriately be made in the recommendations of the Royal Commission on Security concerning the establishment of a Security Review Board, and also indicating the expected work-load of such a Board;
- (b) that, based on these views, a draft policy memorandum for the Cabinet be prepared for circulation to Panel members, and eventually for consideration by the Cabinet Committee on Security and Intelligence and the Cabinet, proposing the establishment of a Security Review Board by special Act of Parliament, and reflecting other necessary legislative amendments; the Board to consist of a Chairman and two other members to be drawn from a limited roster of suitable persons, none of whom should be active public servants;
- (c) that the memorandum recommend to Ministers that the initial procedures for the review of security cases as set out in Cabinet Directive No. 35 be retained in order to ensure that employing departments and agencies endeavoured to resolve doubtful security cases through the use of existing machinery, and not simply by referring them to the Review Board when they arose;

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- (d) that the memorandum consider the pros and cons of permitting access to the Review Board by persons requiring access to classified information as a result of a contractual relationship with a company, a university or the government itself (e.g., industrial workers, consultants, members of task forces, etc.)
- (e) that Members of the Board be given access to all relevant investigative information in any case, but not necessarily to the sources of that information, especially if it had been provided by investigative agencies in other countries.

D.F. Wall,
Secretary.

Privy Council Office.

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