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CONFIDENTIAL

March 8, 1978.

Covering memorandum for use in submitting the proposed
Cabinet Directive on personnel security clearance

Proposal for a Revised Cabinet Directive on Personnel
Security Clearance

Projet de révision de la directive du Cabinet concernant
l'habilitation au secret

1. Problem

The Cabinet Directive (No. 35) which presently sets out policy and procedures for the security clearance of persons to have access to classified information was approved by the Cabinet in 1963, and needs revision.

2. Objective

To obtain approval for the attached documents:

- (a) Cabinet Directive on Personnel Security Clearance, which restates the policy and brings up to date the procedures for this purpose in the light of some 15 years experience, and which is intended to replace the 1963 directive;
- (b) statement to be made when the directive is made public.

3. Factors

A. Revision following Cabinet decision of April 28, 1977

On April 26, 1977, the Cabinet considered a memorandum submitted by the Chairman of the Interdepartmental Committee on Security and Intelligence (Cabinet Document No. 661-75, 29 August, 1975), proposing for approval a draft Cabinet Directive on Personnel Security Clearance. The Memorandum made the following points:

- (a) The proposed revision retained the basic principle set out in Cabinet Directive No. 35, that departments and agencies are responsible for their own security and for implementing government security policy and procedures and applying them to their own particular circumstances.

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- (b) The revised directive referred to the inquiry procedure set out in the Public Service Security Inquiry Regulations approved by the Governor-in-Council on 27 March, 1975, which superceded the provision in CD-35 for a review of senior officials in security cases involving the possibility of dismissal of public servants.
- (c) Annex A of the revised directive set out revised criteria relating to loyalty and reliability, on the basis of which access to classified information would be granted or denied. Attention was drawn to the fact that the reference in CD-35 to "illicit sexual behaviour" had been revised to "sexual behaviour".
- Banks.* (d) The revised directive would require a fingerprint check of all persons being considered for access to classified information. (This would eliminate the exclusion of this requirement in the case of persons in industry, specifically set out in CD-35).
- (e) Annex B of the revised directive set out a Personnel Security Clearance Questionnaire, to replace the Personal History Form presently in force, to be completed by persons being considered for access to classified information. The proposed questionnaire was

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drafted with a view to keeping to a minimum the amount of information solicited, consistent with security needs, and to ensuring that it is used only where access to information involving national security was concerned.

- (f) The revised directive emphasized the role of the security officer in advising the deputy head and in applying departmental security procedures.

On April 28, 1977, the Cabinet agreed that:

1. The text of the proposed directive should be revised by officials, in particular with a view to:
 - (a) replacing the reference to "common-law partner" in Annex B (Personnel Security Clearance Questionnaire) with a more appropriate one such as "co-habitant";
 - (b) including more effective provisions to ensure frankness to individuals in the private sector, particularly mechanisms to provide information and a fair hearing, in cases where individuals might be adversely affected by decisions taken for security reasons, especially where dismissal was involved, and in this respect there should be consultation between the Department of National Defence and the Department of Supply and Services;
 - (c) providing a more effective definition, in Annex A (Criteria for determining personnel security clearance), of the criteria relating to loyalty, particularly those set out in I (b) (vi).
2. The draft directive as revised should be submitted to Ministers for consideration.

Attached is a revision of the draft, intended to carry out the direction of Cabinet.

Alternate terminology has been proposed for the term "common-law partner" in the questionnaire (Appendix B).

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With respect to the provision relating to non-public servants, effort has been made to emphasize the responsibility of the employer and the government to ensure frankness and fairness to individuals who might be adversely affected by decisions taken to deny or limit access to classified information, particularly where dismissal is involved, and to provide that such frankness and fairness be a condition of any contract entered into with the employer. However, the provisions for frankness and fairness do not extend to independent review, such as that set out with respect to public servants in the Public Service Security Inquiry Regulations. It is the view of officials that a requirement to this end would represent a substantial extension of government into relations between employer and employee, and that, if independent review in relation to security clearance in the private sector is to be provided, this would not be appropriate in a Cabinet Directive and should be achieved through legislation.

Annex A (Criteria for determining personnel security clearance) has been re-examined with the assistance of the Department of Justice, and the provision in I (b) (vi) reworded with a view of achieving greater precision. It is realized that this provision remains broad in scope and will be criticized as authorizing investigation of persons who are not of legitimate security concern. However, it is considered be required if adequate protection of classified information is to be achieved.

B. Separatist beliefs

During the review of the draft directive, officials reconsidered its application to persons with separatist beliefs. They concluded that the security considerations related to such persons did not fit well into either of the broad categories:

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loyalty and reliability - which were identified in the draft directive (Annex A) as the areas of concern which must be considered in making decisions on security clearance.

Paragraph (1) of Annex A of the draft directive imposes a duty on the deputy head to deny personnel security clearance when, in his/her opinion, the loyalty of the person concerned is in doubt because of the activities set out. On the other hand, paragraph (2), which sets out reasons for regarding reliability as in doubt, provides latitude to the deputy head in making a decision. The deputy head can, where reliability is involved, grant clearance if, "after careful consideration of the circumstances, including the value of the person's services, the risk involved seems justified."

It seems desirable to relate separatist beliefs to both loyalty and reliability, and to provide the element of flexibility set out in the criteria concerning reliability. It is therefore proposed that there be a third section in Annex A, related specifically to the issue of separatist beliefs.

C. Sexual behaviour

For some time security advisers have been considering the desirability of developing and issuing guidelines to assist departments in making decisions concerning personnel security clearance where the employee concerned is a homosexual. Problems in this matter arise from time to time, particularly where rotational service abroad is concerned, and they are difficult to deal with, particularly in reconciling action taken on security or related grounds with human rights and non-discrimination in government employment practices.

At the meeting on 28 April 1977 already referred to, the Cabinet considered a memorandum submitted by the Minister of Justice (Cabinet Document No. 189-77MC), seeking direction from Ministers on the approach to be taken in dealing with public and parliamentary pressure for inclusion of sexual orientation and political belief as prohibited grounds

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of discrimination in the human rights legislation then before the Justice and Legal Affairs Committee.

The Cabinet agreed, with respect to sexual orientation, that efforts should continue to avoid inclusion in the bill of sexual orientation as prohibited grounds of discrimination, on grounds of national interest, since:

- (1) homosexual persons were not admissible for employment in certain parts of the Public Service (namely in defence, police and penitentiary establishments and in the rotational foreign service);
- (2) homosexual persons were not generally admissible to Public Service positions requiring access to information classified Secret or Top Secret ..."

The subsequent debate in the parliamentary committee on sexual orientation centred on homosexuality, and the Minister of Justice pointed out that homosexuality or sexual preference were not bars to employment in the public service, but rather related to the suitability of a particular person for a particular employment requiring a special degree of stability or immunity from improper pressures. The proposed amendment to include sexual orientation in the bill was not adopted.

While most of the difficulties (and publicity) relate to homosexuality, this is not the only area of "sexual behaviour" that causes concern. Also it would be discriminatory to single out homosexuality as an aspect of sexual behaviour for particular consideration. It is therefore proposed that guidelines along the lines of those set out in the attached draft memorandum to deputy ministers and heads of agencies be approved, and made available to departments to assist them in administering the directive on security clearance where "sexual behaviour" must be considered. It is also proposed that reference be made to the guidelines in the statement to be made when the directive is tabled and that they be tabled at the same time.

D. Minor textual changes

In addition to the above, the text of the directive has been re-examined and revised, particularly with a view to release to the public.

4. Financial Considerations

Nil.

5. Federal Provincial Relations

Nil.

6. Public Relations Considerations

CD 35 was classified Confidential, and has never been made available to the public. However, when it was approved, in 1963, its main features were outlined by Prime Minister Pearson and Justice Minister Chevrier in the House of Commons in the debate on the Justice estimates.

The submission examined by Cabinet in April 1977 recommended that consideration be given to making the directive unclassified, in keeping with the policy of access to information. The interest of the public, Parliament, and the public service in government security policy, including security clearance policy, indicates the desirability of such action. It is important that the revised directive be public, and be seen as consistent with the government's very positive stance on fairness to employees and all citizens. It is therefore suggested that:

- (a) the proposed directive, if approved, be unclassified;
- (b) it be tabled in Parliament, with an explanatory statement along the lines of the draft attached;
- (c) it be sent to all deputy heads with appropriate explanation of its contents, particularly the new questionnaire and

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fingerprinting requirement, and with the proposed guidelines relating to sexual behaviour.

7. Caucus Consideration

It is suggested that the directive be made available and explained to Caucus before tabling, and that the nature of the public presentation be outlined to Caucus before it is made.

8. Conclusion

It is important, particularly in view of the widespread interest in security and security screening procedures, that CD35 be replaced by a document which can be made public and which is better suited to current conditions and situations.

9. Recommendations

It is recommended that:

- (a) the attached Cabinet directive on personnel security clearance be approved as the instrument of government policy and procedure for ensuring the loyalty and reliability of persons to be granted access to classified information;
- (b) the directive be:
 - (i) unclassified;
 - (ii) tabled in Parliament, with an explanatory statement along the lines of the attached draft;
 - (iii) supplied to all deputy heads with appropriate explanation of its contents, particularly the proposed questionnaire, and the extended fingerprint requirement;
 - (iv) supplied to all public service staff organizations, with appropriate explanation;

- (v) effective three months after the date of approval, in order to provide time for briefing departments and agencies, and the printing of the proposed questionnaire;
- (c) CD 35 be revoked effective the date of the coming into force of the proposed directive;
- (d) the Public Service Commission inform persons entering the public service of the possible requirement for security clearance during their public service careers, and explain the reasons and the procedures involved.
- (e) the attached document "Sexual behaviour, security, and public service employment" be approved to assist departments and agencies in making employment decisions where security is a consideration and tabled with the Cabinet directive.

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