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April 6, 1978

MEMORANDUM TO MR. LAWRENCE

c.c. Major Lemieux  
Mr. Tait

The Canadian Human Rights Act, Part IV :  
Major Lemieux's Memorandum of April 5

This is to report on my meeting on April 5 with Major Lemieux, held to discuss his memorandum to you on the effect of the Canadian Human Rights Act, Part IV on the security screening programme.

At issue is a series of complex and interrelated questions pertaining to the security screening policy, the classification system for documents, and improved methods of ensuring the security of information. The Commissioner of the RCMP has written all deputy ministers and agency heads (see attached memorandum of March 28) stating that in view of the narrowness of the scope of exemptions provided by s. 54 of the Canadian Human Rights Act, the Force will no longer process security screening requests "which do not relate to national security nor meet the requirements of Cabinet Directive No. 35".

This position has caused concern among some deputy heads (as shown, for example, in the attached letter of April 3 from the President of CIDA). Major Lemieux informed me that this concern is abating now that the RCMP has modified this stance to the extent of accepting requests for security screening as before. However, before releasing a negative clearance report, the Force now requires a written undertaking that, if access to it is requested by the individual concerned, the Department will recommend to the Minister an exemption on the ground of national security.

The RCMP, in essence, are putting the onus on its client departments to define the concept of "national security" insofar as it relates to personnel security clearance files. The Forces' concern appears to be that some personnel security clearance files do not fall within the scope of the "national security" exemption, files for instance pertaining to prospective employees who will never be exposed to "national security" - related classified information. I agree with Major Lemieux (and Ted Finn) that this is an unduly narrow interpretation.

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It could legitimately be argued I believe (and no doubt has been argued in the past) that all security clearance files may involve national security, if for no other reason that informants may otherwise stop providing information. Major Lemieux, however, does not wish to go this far. He and Ted wish to restrict the scope of the "national security" concept, for the purpose of conducting security clearances, to cases of prospective employees who will have access to records described in 54(a) (international relations, national defence or security or federal-provincial relations), 54(b) (confidences of the Privy Council) and 54(c) (investigative records).

He is proposing a scheme whereby all Departments would have to prepare a list of positions involving exposure to such information. Those positions, and only those positions, will merit an RCMP security clearance. This contrasts dramatically with the current situation whereby some Departments require security clearances for virtually all their employees (e.g. National Revenue-Taxation). Major Lemieux estimates that this approach would reduce by a half the security clearances conducted by the Force, thereby providing a faster service to departments, and a better service for those cases that really require security clearance. At the same time, departments will be encouraged to adopt better internal security management (e.g. restricted access for Statistics Canada employees to Statistics Canada files). The present across-the-board security clearance system has lulled departments into a false sense of security, with the result that many basic steps to secure internal security have not been taken.

This approach strikes me as commendable, especially in view of the criticism of late of the vagueness of the term "national security". I see it, however, as a policy rather than a legal question. The policy implications, needless to say, are extensive.

Following our discussion, Major Lemieux said that he would proceed to draft a paper giving substance to his proposals, which he will send to you for comments. He expects no further action from you at this time.

The one cautionary note I would sound is that if the concept "national security", for the purpose of authorizing exemptions under the Canadian Human Rights Act, is explicitly limited in the case of security clearance

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files to those pertaining to employees having access to the sorts of information specified in paragraphs 54(a), (b), (c), this interpretation would leave unprotected the mass of existing security clearance files and associated records that do not pertain to such employees.

  
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