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November 25, 1977.

MEMORANDUM FOR MR. PITFIELD

Briefing Notes: ICSI Meeting ^{FRIDAY}
~~Tuesday, November 29~~ 2 DECEMBER 1977
at 2:30 P.M.
Room 414, Langevin Block

There are five items on the agenda. Set out hereunder are notes on each.

I have asked Mr. Gallant to attend for items 1 and 2 (Personnel security clearance, Homosexuality), Mr. Desroches for item 1, and Mr. Walton, the Director of Emergency Planning Canada for item 5 (Censorship Planning). I suggest that these officials be asked to be present only for their items. It is important that only officials with appropriate indoctrination be present for item 4, concerning the signals collection system.

1. Draft directive on personnel security clearance

Mr. Bourne could speak to this item.

There are three documents: a redraft of the directive on personnel security clearance, a draft Cabinet document for use in submitting it, and a draft statement to be made in the House when and if the directive is tabled.

The draft directive is intended to replace Cabinet Directive 35, approved by the government in 1963 and presently in force, setting out policy and basic procedures for security clearance for access to classified information. A draft of the revised directive was developed by the Security Advisory Committee, approved by the ICSI two years ago, and considered by the Cabinet Committee on Security and Intelligence and by Cabinet last April. Ministers directed that a number of revisions be made, and these have been incorporated in the text.

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The text has been reworked with Justice with a view to making it suitable for publication. The three points of concern to Ministers in April were:

- (1) the provision for fairness and frankness for persons in the private sector who require security clearance. The problem is that the review procedures established for public servants are difficult to apply where the government is not the employer. Ministers were concerned that under the directive there will be a double standard and non-public servants would be less well treated than public servants when there is doubt about loyalty or reliability. On instruction from the Cabinet, DSS and DND re-examined paragraph 25 of the directive, and it has been revised to provide a review procedure involving government and employer which must be followed as a condition of any contract entered into in the private sector. It has not been possible however to propose extension to the private sector of the independent review procedure established by the Public Service Security Inquiry Regulations for cases where dismissal on security grounds is considered. Such extension would require legislation.
- (2) the provision in I (b) (vi) of Annex A (which sets out criteria for determining personnel security clearance). This criterion relates to "activities evidencing a commitment to an ideology ... detrimental to ... democratic government ... as ... understood in Canada". It was proposed by the Security Service, who regard it as essential if security screening is to be effective. Ministers were concerned that the provision was too broad and would be greatly criticized by the public. We have consulted with the Security Service and our legal advisor and a new text has been proposed. It is still very broad and you may want to draw attention to it in the discussion.

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- (3) the provision in Annex B (the questionnaire to be completed by persons requiring security clearance) which requests information about a spouse or a person in a similar relationship with the subject of the investigation. The Personal History Form presently in use requests information only about spouses. The SAC proposed extending this to common-law partners. Ministers felt that other similar relationships should also be included, and suggested the term "co-habitant". We have found problems with this phrase too, and have suggested alternate wording to cover relationships similar to marriage.

Other aspects of the directive that might be emphasized in the discussion are:

- (1) the extension of the fingerprint procedures to non-public servants requiring access. This is likely to be much criticized if implemented, but the present arrangement, with fingerprinting required only of public servants, is obviously unfair. (The 1969 Royal Commission report recommended fingerprint checks for industrial workers as part of the clearance process).
- (2) the inclusion in Annex A of "sexual behaviour" as a characteristic to be considered when deciding on reliability. Homosexuality is not mentioned, but most attention centres on this. Some critics seem to have the impression that homosexuals are excluded from employment in the public service. This is not true. There is indeed no blanket exclusion from security clearance. A judgment must be made, in the light of the risk involved. This aspect of the directive relates to Agenda item 2, which proposes guidelines for departments in dealing with homosexuality in the security context.
- (3) the provision that clearance will generally not be granted to "an alien or former alien with less than ten years residence in Canada". This is considered necessary because meaningful investigations cannot be carried out otherwise. However, it will be criticized on the grounds that all Canadians should be treated alike.

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Mention may be made in the discussion of the brief on security policy submitted to the government last summer by the Public Service Alliance. The main point made was that departmental requirements vary, and clearances are often required when they are not really necessary. Mr. MacEachen (to whom the brief was sent) agreed to a meeting of alliance and public service officials, and at the meeting Mr. Bourne said the policy was under review and the new directive would help guard against misapplication of security policy.

The draft Cabinet document and statement for use in tabling the directive have been reviewed by Shirley Popham and her suggestions have been taken into account. She thinks there should be more emphasis in the draft statement on the rights of the individual.

The revision of CD-35 has been in the works for many years. When critical letters have been received by the Prime Minister or the Solicitor General concerning security policy, the response has been that the policy is under review. Continuing delay causes increasing embarrassment and ridicule. I think it is most desirable that the revision be finalized, approved, and made public as soon as possible. (Ms. Popham suggests no announcement until after the Christmas recess, and I would agree with that much delay).

Last April Dr. LeClair wrote to Mr. Robertson, asking for ICSI consideration of a recommendation in the brief of the Public Service Alliance that the independent review procedure provided for in the Public Service Security Inquiry Regulations (made pursuant to the Financial Administration Act) be extended to cases where transfer or suspension for security reasons is being considered. (The Regulations related only to dismissal cases). Mr. Robertson undertook to raise this in the ICSI. The Treasury Board secretariat agree that transfer should be included, but not suspension. This matter is only peripherally related to the draft directive. If any change is to be made along the PSA lines, it will require amendment of the Financial Administration Act. Perhaps Dr. LeClair could be asked to draft an appropriate memorandum to Cabinet, setting out a formal recommendation, which ICSI could later consider.

Dr. LeClair also suggested the possibility of a conflict between the security inquiry mechanism under the Financial Administration Act (which provides for in camera hearings and denial of certain information) and the human rights legislation. Mr. Robertson suggested that Justice examine the

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problem and sent Mr. Thorson a copy of Dr. LeClair's letter and his reply. There has been no response from Justice. I doubt if there is a problem, as the human rights legislation provides exemptions where security is concerned.

2. Homosexuality in relation to employment where security clearance is required

The document is intended to provide guidelines for departments and agencies to assist them in implementing the policy set out in the Cabinet directive on personnel security clearance. A first draft was considered by the ICSI last April, and has been revised pursuant to the discussion.

Most of the criticism of the first draft came from the representative of the Public Service Commission, Miss Szlazak, who was concerned about damage to the merit principle if homosexuals are excluded on security grounds. The redraft was submitted to the PSC for comment, and the Anti-Discrimination Branch examined it and provided suggestions. These were submitted to Mr. Robertson and he accepted most of them. The attached text is the result.

The problem of homosexuality is most serious for External (and any postings abroad) and for the military and police. In these contexts it is of course not exclusively related to security clearance. It is more a general question of suitability for performance of the duties involved, involving as it does, in some countries, serious legal consequences.

The proposed guidelines could be distributed throughout the public service, or kept here for supply to any department requesting advice. I think Mr. Robertson favoured the latter. You may want to raise this question. Consideration might even be given to making the guidelines public. (There is presently under study a letter to the Prime Minister from a gay rights organization, asking what the government employment practice is concerning homosexuality.)

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3. TEMPEST testing policies and procedures respecting communications-electronic equipment within the Government of Canada

Mr. O'Neill could also speak to this item.

4. Proposal to increase the efficiency and productivity of the signals collection system

5. Report on Censorship Planning in Canada

The Committee has received two documents:

- (a) the Griffiths report;
- (b) a summary of the report by Chairman SAC which also claims "to examine whether,

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or not peacetime censorship planning in Canada should be continued".

Griffiths' term's of reference are listed on page 11 of the report. Briefly, these required him to recommend:

- (a) should censorship planning be continued;
- (b) if so, what department should be responsible;
- (c) its purpose and regulation;
- (d) a proposed national organization together with administrative support;
- (e) on liaison between departments, with the private sector and with other nations;
- (f) other administrative matters.

The recommendations related to these are in Chapter 4 of the report.

With regard to the prime question "should censorship planning continue" Griffiths is quite categoric that it should; but with the scope and methods to be determined after proper departmental examination. The paper prepared by the Chairman SAC appears on balance to favour the retention of censorship planning but in paragraph 24 offers some questions for discussion which seem to re-open the whole problem. It seems therefore that the first matter for decision by the Committee is whether or not it accepts Griffiths' recommendation. Certainly the arguments on behalf of censorship planning are better marshalled than those against, but neither is developed in a form that is appropriate to submit to Ministers if and when the Committee decides to do so. Thus it may be necessary, even in accepting the basic proposition, to have the supporting arguments re-worked.

Griffiths' second recommendation is to assign responsibility for censorship planning to the National Emergency Planning Establishment (NEPE), now called Emergency Planning Canada (EPC). Although on face value this would appear logical you may recall that the Dare Report together with opinion within the PCO took the view, which was endorsed by Cabinet in its decision of

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October 1973, that all emergency functions should be assigned to appropriate executive departments or agencies and that EPC should be left free to perform a coordinating staff function in aid of, and directed by, this Secretariat. There are two further pertinent factors:

- EPC is essentially the government's interface on emergency preparedness with provinces, municipalities and the public and thus its functions should as far as possible remain overt;
- the fact that EPC takes its direction from this Secretariat is public knowledge, thus the responsibility for censorship, if assigned to EPC, could be traced direct to the Prime Minister.

You may agree that this proposal too requires further consideration.

The organization and administrative recommendations leave a number of questions unanswered. For example in Chapter 4 paragraph 16 Griffiths' states that "appended as Chart No. 1 is an outline diagram of a proposed censorship organization which I submit will meet the test of supervision, accountability, interdepartmental liaison and policy coordination". Since this chart omits any direct reference to the Director General EPC for whom he has elsewhere proposed very specific responsibilities, it is difficult to accept the claim he makes. The problem appears to be that the proposed organization has been designed from a general knowledge of the perceived roles rather than from a precise knowledge of specific functions, and the relationships and procedures necessary to bring them together in an effective system. Here too, you may feel that some further work is necessary to develop not only a general organization, but also the specific responsibilities and required capability of each component within that organization.

Thus you may agree that the Committee should take note, with appreciation of the painstaking investigation in it, of the Griffiths' report; and ask an interdepartmental working group (as suggested by Griffiths in relation to certain subjects) to take the matter further with a view to preparing a submission to Ministers.

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It is, therefore, suggested that the Committee might instruct a working group to:

- (a) develop a conclusive argument to support a decision by the Committee related to the desirability of continuing to maintain a censorship capability; and if that decision is in favour of doing so, and taking into account any further direction the Committee may provide;
- (b) identify the precise nature and scope of required censorship functions; and determine the desired capability, as far as possible in quantitative terms, related to each function;
- (c) indicate to which department or agency of government each function should be assigned, and recommend the related responsibilities and authority;
- (d) recommend an organizational structure for the censorship system including the methods, procedures and responsibilities for directing and coordinating peacetime planning for censorship and for regulating, controlling and tasking it in war;
- (e) make proposals for staffing and training the censorship organization in peacetime and for expanding it effectively in war;
- (f) determine the extent to which the censorship organization should liaise and cooperate with Allied nations;
- (g) propose methods and responsibilities for keeping abreast of modern technology;
- (h) recommend appropriate financial arrangements consistent with the above proposals.

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There remains for the Committee to decide whether or not to extend the service of Mr. R.P. St-Pierre who has been "managing" the censorship function since Mr. Gaskell's retirement. It would seem that if the Committee accepts the above proposal for a working group Mr. St-Pierre should be retained at least until it has completed its task.

T.D. Finn