

CONFIDENTIAL

SP-224

April 6, 1966.

MEMORANDUM FOR THE SECURITY PANEL:

General Inquiry into Security Methods and Procedures

1. On March 7, 1966, the Prime Minister announced in the House of Commons that, in the light of public concern which had been expressed about security matters in general, and in order to assist the Solicitor-General in his new responsibilities, the government had decided to institute a judicial inquiry into the operation of our security procedures generally. Following that announcement, initial consideration was given the possible terms of reference for such an inquiry, as well as some of the problems deserving of study prior to its establishment. Certain of these problems and considerations, which are set out in some detail below, will require discussion with the Commissioners-designate prior to their appointment. It may also be desirable for the government at an appropriate stage to discuss the draft terms of reference with certain of the leaders of opposition parties in the House of Commons, with a view to achieving agreement that the inquiry will be conducted in an impartial and non-partisan manner.

2. The Prime Minister has requested that the Security Panel examine the attached draft terms of reference for the inquiry, consider fully the views set out below, and make appropriate recommendations to the Cabinet Committee on Security and Intelligence for eventual approval by the Cabinet.

General Nature of the Inquiry

3. In the most general terms, the purposes of the inquiry should be to provide sound guidelines for Canadian governments, present and future, as to the most desirable and effective means of ensuring Canada's safety against the encroachments of espionage and other subversive activities which may from time to time threaten our development as a free, independent and peaceful nation. It must also be conducted in such a way as to preserve and advance Canada's position in relation to the other nations of the world as a country where the freedom and rights of the citizen are respected. If these general purposes are accepted, the inquiry must then look essentially to the future, and examine the past in a positive and forward-looking sense rather than with a view to assigning blame for past errors.

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4. The terms of reference, which are attached as an Appendix, have been drafted to provide adequate scope for a full and inclusive inquiry, leaving the Commissioners with very broad discretion in their approach, both as to substance and procedure. It seems clear that the best results will be achieved through an informal, persuasive and non-legalistic approach, although the Commissioners will always have full powers under the Inquiries Act should circumstances require their use. It is recommended in the strongest terms that as much of the inquiry as possible be conducted in private, for reasons which will emerge below.

The Commissioners and their Staff

5. It will of course be for the government to determine who shall be appointed as Commissioners, and how many there shall be. An inquiry of this order would require at least three persons, one of whom should be from French Canada. While it is probably desirable that the Chairman be a senior judge, possibly of the Supreme Court of Canada, the others should be chosen with due regard to the fact that security problems are essentially matters of judgement in relation to probable human behaviour, and not normally matters of the proof or disproof of the lawfulness of specific human acts. The choice of senior staff for the Commission (Secretary, Research Director, Counsel, etc.) will be of very great importance. In advising the Commissioners on these choices, it would seem valuable to bear in mind the long-term staffing of the Department of the Solicitor-General, which will have an important and continuing responsibility in the general area of the inquiry.

Procedures of the Commission

6. (a) - in relation to the Public Service

In order to achieve the most desirable results, the Commission will have to command the respect, confidence and full co-operation of all the individual public officials concerned, as well as that of their departments and agencies. The views and advice, as well as the past actions, of officials concerned with security matters will need to be examined fully and frankly. This can best be done through private and informal consultation and discussion with full notes being taken, rather than through the giving of evidence under oath in the circumstances of a court room. While there may be certain occasions when the Commissioners would consider it necessary to adopt a more formal approach, in relation to an unco-operative official, department or agency, the general effect of introducing the machinery of compulsion would lead inevitably to the adoption of self-protective attitudes by officials and their departments alike, and the inquiry would become in their minds an inquisition.

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This would in turn lead to demands by officials and their departments for counsel, the adoption of rigidly defensive positions, the further disruption of departmental work, increased costs and a general loss of efficiency, both by the public service and the Commission itself. In order to avoid these pitfalls, it would have to be clearly understood by departments and agencies that the whole of their files in relation to security must be openly available to the Commission, and that the avoidance of compulsion would depend entirely on their providing full co-operation and assistance. In general, it is to be hoped that the Commission would see fit to adopt procedures in relation to the public service similar to those which were adopted by the Royal Commission on Government Organization in carrying out its researches. Where it considered that evidence, as such, had to be taken, it could adopt more formal procedures.

(b) - in relation to individual subjects of security cases

The Commission will be required, both at its own initiative and at the request (or demand) of individual persons within and outside the public service, to look into particular cases in which there is a presumption that the security of the state or the rights of the individual, or both, were improperly served. It will, however, be essential that the Commission make clear that it is not going to review cases in the sense of re-opening them with a view to modifying the finding that was made or the action that was taken. It should look into cases only to gain insight into the ways in which they were handled, the principles applied, and the need (if any) for further protections, and so on. It can be expected on the one hand that a number of persons of the order of Pat Walsh and Calvin Macdonald will demand inquiry into, and restitution for, their "mistreatment" by agencies of government in the area of security operations. At the other extreme, the Commission may deem it desirable to look into the cases of outstandingly able and productive Canadians who, having manifested one human frailty or another, which was deemed to threaten security, decided or were persuaded that they should leave the public service, despite their obvious value to the country. A variety of categories of cases will lie between these two, ranging from avowed but secret enemies of our system of government who will wish to use the inquiry for their own destructive purposes, to persons whose only fault is that they have relatives behind the Iron Curtain. While some of these individuals will seek the widest publicity, others will desire, and deserve, the most scrupulous protection of their identity and personal privacy and each may seek legal assistance to serve the ends which are most important to them as individuals. The most careful judgements by the Commission and its staff, together with the assistance of the departments and agencies concerned, will be required in dealing with these individuals if the public interest as well as their private interests are to be respected. It is in certain of these cases that the Commission may deem it desirable or necessary to set between themselves and the individuals concerned some of the mechanisms of legal procedure, preferably in camera, in order to carry out their terms of reference.

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(c) - in relation to public organizations which request to be heard, and the public in general

There is no doubt that a variety of public organizations will wish to put their views before the Commission, whether through written submissions or by the hearing of representative delegations. The organizations will probably range from the Communist Party of Canada through the various youth, "front", cultural and ethnic groups of communist persuasion to almost equally voluble and committed, although less numerous, groups of anti-communist or other "right wing" inclination. Between the obvious extremes will be a variety of equally concerned but probably more responsible groups such as the Royal Canadian Legion, the Canadian Chamber of Commerce, and the Canadian Association of University Teachers. It is also quite possible that at least some of the vaguely socialist and separatist-oriented groups in Quebec will wish to be heard. The Commission will have to decide at an early stage whether to limit such representations to written submissions or whether to permit a series of hearings, either of a whole range of organizations who travel to see them, or a cross-country tour by the Commission itself in the manner of the Royal Commission on Bilingualism and Biculturalism. It would seem sensible to begin by receiving written submissions only, and then to determine what further response to public interest was necessary or desirable. If the Commission were to sit in Ottawa only, it would help to ensure that only serious representations come forward. The general publication of those submissions whose originators wished them to be published would serve to stimulate public debate, and would satisfy to some extent the demands of the mass media for day to day news arising from the operations of the Commission itself. It would also provide the impetus for a certain amount of informed Parliamentary discussion of the Commission's work, which would be desirable in many respects. It would be unrealistic to assume that there would not be debate until the Commission had made its final report. On the other hand, submissions made in confidence would have to be scrupulously honoured in that respect.

(d) - in relation to the mass media

Despite the very great pressure there will be, some of it legitimate and justifiable, for the Commission to conduct a major portion of its work in public, I believe that to yield to such pressure would be irresponsible and unproductive. There is no question that security matters should be, to the extent possible in any set of circumstances, open to consideration and debate by the public at large. Equally, there is no question that security matters make "good copy", and are clearly subject to a degree of distortion by the media, whether inadvertent or otherwise, which seriously delimits the application of reason and judgement to problems which cry out for calm and reasonable adjudication. In their own interest, as well as in that of

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the individuals and organizations whose activities they will be examining, it is to be hoped that the Commissioners would from the beginning adopt a firm and responsible position in relation to the mass media, by deciding that its proceedings would be carried on in private except where the national interest clearly dictated the desirability of public participation through the press, television and radio.

(e) - in relation to other countries

Depending upon the extent to which its deliberations are publicized, the work of the Commission will have a bearing on Canada's relations with other countries. There is the risk that the Commission's revelations, either during its inquiry or as a result of its public report, will cause our closest allies to reconsider the present arrangements by which Canada receives from them a substantial and very useful flow of political, economic, technical and defence information. There is also the risk that the Commission's public proceedings and reports could adversely affect Canada's efforts to achieve more positive and productive political, economic and cultural relations with countries within the Soviet and Chinese communist spheres of influence. While some risks in each of these areas may prove necessary, it would seem that granting due regard to the sensitivities of our present friends and our potential enemies alike would be prudent and wise. Periodic and judicious consultation with the United States, Britain, France and other allies, by the government and possibly by the Commission as well, would undoubtedly reduce the risks in the first area. In the other area, the very fact of the Commission's existence, as well as the manner in which it conducts its inquiries and makes its reports, could not only reduce the obvious risks but could also provide opportunities for imaginative and productive diplomacy. There can be no question that our bargaining power as a nation increases as we increase our knowledge of the real but often partially hidden intentions, desires and fears of the nations with whom we deal.

The Commission's Reports

7. As the inquiry may well take eighteen months to two years to complete, provision should be made for the submission of confidential interim reports to the government on specific

APPENDIX

Draft Terms of Reference for Inquiry on Security
Procedures

The Committee of the Privy Council, on the recommendation of the Right Honourable Lester Bowles Pearson, the Prime Minister, advise

1. that () be appointed Commissioners under Part I of the Inquiries Act to make such investigation as they deem necessary and desirable in the national interest into the operation of Canadian security methods and procedures and, having regard to the circumstances in which those methods and procedures have been applied, to determine

- (a) if such methods and procedures have been effective in preserving the security of the nation;
- (b) if such methods and procedures have been so applied as to give due regard to the rights and responsibilities of the individuals involved;
- (c) if such methods and procedures, and the means by which they have been implemented, are in need of modification;

and to make such reports and recommendations as they may deem necessary.