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512

October 22, 1969.

A meeting of the Security Panel  
will be held on Monday, November 3rd, 1969,  
at 11:00 a.m., in the Privy Council Committee  
Room, East Block.

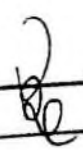
A G E N D A

I. Establishment of the Security  
Review Board.

(Security Panel Document SP-236  
of October 22, 1969, attached).

D.F. Wall,  
Secretary.

Privy Council Office  
O t t a w a.

Reviewed 
OCT 31 1969
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*Com's. Haggitt*  
*has original*

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SECRET

October 22, 1969.

SP-236

MEMORANDUM FOR THE SECURITY PANEL

Establishment of a Security Review Board

Members of the Security Panel will recall that, in his statement in the House of Commons at the tabling of the Report of the Royal Commission on Security on June 26 last, the Prime Minister said:

"...the government, after careful consideration, has decided to accept the Commissioners' recommendation for the establishment of a Security Review Board. Full details of the scope, character and operation of the Board are still under consideration and these may differ in some respects from the Commission's recommendations."

Attached for the consideration of the Security Panel is a copy of the Royal Commission's recommendation. Also attached are copies of Memoranda prepared by the Department of Justice dated October 3 and October 10, 1969, setting out the views of that Department on the establishment of a Security Review Board, 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.

The Memoranda of the Department of Justice raise several questions which the Security Panel will have to consider in determining the nature of recommendations to be made 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. The major questions would appear to be:

- (a) In light of the doubt expressed by Justice that the Board, acting as envisaged under Section 7 (7) of the Financial Administration Act, could provide a hearing that would meet the requirements of natural justice if its procedures were examined by the courts, should the Board be established by a special Act of Parliament which would take this limitation into account, or is it feasible, as Justice suggests, to establish the Board through an item in Estimates?
- (b) Are the terms of reference for the Board, as proposed by the Commissioners, too broad? For example, should "apparent inhibition of career prospects on security grounds" be subject to review by the Board?
- (c) Should review provisions apply to Members of the Canadian Armed Services and the R.C.M. Police?

The Security Panel is asked to consider these and other questions in relation to the establishment of a Security Review Board, and to make appropriate recommendations to the Cabinet Committee on Security and Intelligence.

D.F. Wall,  
Secretary.

Privy Council Office,  
Ottawa.

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SP-239

July 6, 1970.

MEMORANDUM FOR THE SECURITY PANEL

Security Review Board

As agreed at a meeting of the Security Panel on November 3, 1969, a draft policy memorandum for the Cabinet recommending the establishment of a Security Review Board by Act of Parliament was prepared and circulated to members of the Panel for comment on February 10, 1970. Although an attempt has been made to redraft the policy memorandum in such a way as to reflect the comments received (see Appendix "A"), a number of significant conflicts and problems of policy and procedure remain outstanding.

(a) Immigration Policy

The Minister of Manpower and Immigration has indicated that he cannot support the recommendation of the Royal Commission, which is strongly upheld by the R.C.M. Police, that access to the Review Board should not be given to "persons without sponsors or nominators who enter Canada ostensibly as visitors and then request a change of status to that of landed immigrant." Although it is not clear whether the Royal Commission intended to include in this category independent applicants for admission at ports of entry, (who now have recourse to the Immigration Appeal Board, as do independent applicants for landing in Canada), the Minister takes the position that -

"persons ordered deported concerning whom no factual evidence has been presented should not arbitrarily be denied a review of their cases or have no recourse to appeal".

The Minister further considers that, as under existing immigration legislation all persons ordered deported have the right of appeal -

"it is doubtful whether Parliament would enact, or the Canadian public accept, legislation denying the right of appeal to a special group of persons. Such legislation would seem to deny any semblance of natural justice and might well be contrary to the Bill of Rights."

The R.C.M. Police, on the other hand, while agreeing that a landed immigrant should not be deported without the right to appeal, do not consider that a similar

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right of appeal should be available to a person who is either in Canada applying for landed status, or at a port of entry seeking admission to Canada. It is their experience that the great majority of persons applying at ports of entry are "allowed forward without status", and if a security objection is raised, a valid deportation order is required to remove them, against which such persons have a right of appeal to the Immigration Appeal Board. In such cases, it is very seldom possible for the R.C.M.P. to bring forward factual evidence of a security nature upon which a deportation order might be based, because of the necessity of protecting the sources of the information involved, whether these sources are individuals or cooperative security agencies in other countries.

Despite earnest efforts by those concerned to resolve this conflict, it continues to exist. Its importance to the government lies in the fact that the majority of cases coming before the Security Review Board would be cases in which a security objection has been raised against the entry of persons to Canada in the immigration stream. While it may not be possible for the Security Panel to resolve the conflict, it is strongly recommended that the issues be placed before Ministers in such a fashion that resolution is possible, as without it there will be little point in establishing a Security Review Board at all.

(b) Categories of Persons who will have Recourse to the Review Board.

In the Security Panel's earlier discussion of categories of persons who would have recourse to the Security Review Board, it was tentatively agreed that some groups would have to be excluded. For example, the R.C.M.P. felt that existing machinery for redress of grievance under the R.C.M.P. Act and Regulations was adequate, and that Regular Members of the Force should not have access to the Board. The Public Service Commission considered that recourse to the Board should only be provided to persons being dismissed or demoted for security reasons, and not to those being transferred or denied promotion for similar reasons. Further, there is the question posed above as to which categories of applicants for entry to Canada should be given a right to have their cases reviewed by the Board. Questions were also raised as to whether academic consultants and industrial workers on classified contracts should be included.

On reflection, it would seem that to be publicly acceptable, and to serve the purpose envisioned by the Royal Commission -

("to provide for a meaningful review of the decisions of departments, preserve the requirement for governmental responsibility and decision, give adequate protection to sensitive information and sources yet provide a reasonably effective safeguard against arbitrary, hasty or ill-considered judgements"),

the facilities for independent review, and for a formal hearing at least in cases of proposed dismissal from the public service

on security grounds, should be available as a final resort to any person who might be denied his rights or liberties because he could not, for security reasons, be given an opportunity to refute all of the evidence submitted against him.

If this principle is accepted, it would seem desirable that the legislation establishing the Board make clear that the avenue for independent review, where formal and judicial appeal is not possible for security reasons, is open to the broadest possible range of persons whose rights or liberties may be denied for the reasons stated above. In order to avoid frivolous or unjustified claims coming before the Board for review, it should be made equally clear that cases would be referred to the Board only after existing departmental and other mechanisms for review or appeal had been exhausted without a satisfactory resolution of the doubt which gave rise to the inhibiting decision, whether it was a decision to dismiss, suspend, demote, transfer, deny promotion, deny security clearance after appointment, deny entry to Canada, deport from Canada, or deny Canadian citizenship.

(c) The Function and Method of Operation of the Security Review Board.

As is suggested in (b) above, the legislation should make quite clear that the essential purpose of the Security Review Board is to provide facilities for review and advice to the bodies which have the power of final decision, and not to provide facilities for formal or judicial appeal against their decisions. Indeed, the whole purpose of establishing the Board by a special Act of Parliament rather than through an item in Estimates is to seek legislative sanction for the withdrawal of one of the basic requirements of natural justice, that a person be given "a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice". In other words, the function of the Board is to provide a kind of "honest broker's" assurance, to the individual concerned and to the public at large, that its scrutiny of governmental decisions in the sometimes murky area of "security" provides the best available substitute for the fulfillment of the requirements of natural justice in circumstances in which it is not in the public interest to make available to the individual, and to the public in general, all of the relevant information.

It has been suggested that, to avoid an unmanageable workload, excessive travel, and the possible jeopardy of sensitive information, the Board limit personal interviews with individuals concerned to those cases involving dismissal from the public service on security grounds--that is, cases as presently envisaged under Section 7 (7) of the Financial Administration Act, which provides for an "inquiry" and a "hearing" prior to dismissal. In accordance with this suggestion, other cases, whether they dealt with suspension, demotion, denial of promotion or clearance, transfer, denial of entry to Canada, deportation or denial of citizenship, would only involve a review of all available information

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pertaining to the case, and the submission of advice to the authority with the statutory power of decision. While there is an attractive tidiness to this proposal, it may be desirable to provide the Board with some statutory discretion in determining itself those cases in which personal interview may be a necessary procedure in order to resolve, or assist in resolving, the doubt which has arisen. Indeed, it may be that many of the present problems which surround the operation of the Immigration Appeal Board may be solved by providing in the legislation that the Security Review Board would assume some or all of the functions of the Immigration Appeal Board in cases where the relevant information could not, for security reasons, be made available to it because that Board must, as a court of record, operate in the public view. It is assumed, of course, that the Security Review Board would act in camera because of the very nature of its function.

"all info  
Security is  
maintained"

As the Board must necessarily have available to it all relevant security and other information in any case it considers, it will be essential that its members as well as its staff be satisfactorily cleared for security to the highest level, prior to appointment, and that its operations be conducted in accordance with standard security procedures as laid down by the government for application in all departments and agencies.

It may also be necessary to make clear in the legislation, as is already stipulated in the Cabinet Directive on Security, that in employment cases where a security doubt has arisen it is essential in the interest of security that administrative action to deny access to classified information be taken before a case is reviewed by the Board. This will in some cases cause the employee some hardship, as there may be some loss of effective employment between the time of, say, denial of security clearance, and the time of review by the Board and eventual decision by the proper authority. It will be necessary to consider what status the employee should have during this intervening period, and what recompense should be made for any loss he may suffer.

(d) Quebec Separatism

Although it may not directly affect the legislation, the government will have to decide before the Board goes into operation whether cases involving Quebec separatism will be referred to the Board for review. The policy question of what attitude the government proposes to adopt towards separatism is posed in Security Panel Document SP-238, covering "Personnel Security".

(e) Form and Substance of the Policy  
Memorandum for the Cabinet.

Attached at Appendix "A" are the substantive portions of a draft policy memorandum for the Cabinet, revised to reflect, as far as possible, comments and proposals

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submitted by members of the Security Panel based on the earlier draft, retaining the form in which the original was drafted by the Department of Justice. It is evident that a final draft cannot be prepared until the Panel, and probably the Cabinet Committee on Security and Intelligence, have considered and resolved the conflicts and problems discussed above, and others which will no doubt arise during discussion. The attached document is therefore intended as a framework within which the problems cited above might be discussed.

The Security Panel is therefore asked to consider, with a view to preparing a policy memorandum for the Cabinet proposing the establishment by legislation of a Security Review Board, and in light of the points raised above at (a) to (e) above, the following questions:

(a) Immigration Policy

- (i) whether a right of appeal against deportation should continue to be permitted to independent applicants for landing in Canada; and independent applicants at ports of entry;
- (ii) if so, should the Review Board be given the function of dealing, either decisively or in an advisory capacity, with those cases presently referred to the Immigration Appeal Board in which security is a major factor, but which cannot be satisfactorily resolved by that Board because it is a court of record.

(b) Categories of Persons Who Will Have Recourse to the Review Board.

- (i) Should it be recommended as a basic principle that the facilities of the Board, whether in terms of formal inquiry and hearing, or in terms of a "case review" of all the pertinent information, should be made available to any person who might be denied his rights or liberties because he could not, for security reasons, be given an opportunity to refute all of the evidence submitted against him;
- (ii) If this principle is recommended and accepted, what are the categories of persons in relation to public employment, entry into Canada or the granting of Canadian citizenship whose rights or liberties might be deemed to be infringed by action taken or proposed in security grounds.

(c) Function and Method of Operation of the Security Review Board.

- (i) Should the legislation stipulate precisely which categories of persons in each of the fields of employment, immigration and citizenship should be permitted personal access to the Board, or should the Board be permitted discretion to order personal appearance when the circumstances appear to make it desirable;

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- (ii) In either case, should a personal appearance before the Board be deemed to constitute a formal hearing in the judicial sense (as presently envisaged by Section 7 (7) of the Financial Administration Act), or should the Board be permitted discretion to determine in the light of the circumstances of the case when a formal hearing is desirable, and whether personal appearance before it shall simply constitute a further step in clarifying factual information provided by the department or departments concerned;
- (iii) Can it be accepted as a basic principle that all information available to the R.C.M.P. or any other investigative agency involved, be made available to the Board, with suitable safeguards for the protection of the identity of specific sources of such information;
- (iv) Should the legislation, or regulations made under it, make clear that administrative action to preserve security may have to be taken in most cases before a person is heard or a case reviewed by the Board.

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adequate  
safeguards for  
this info  
etc.*

(d) Quebec Separatism

What recommendation can properly be made to the government as to the attitude it should adopt, in terms of policy and procedure, to the threat to security posed by the various aspects of Quebec separatism.

(e) Form and Substance of the Policy  
Memorandum for the Cabinet

In what manner should Appendix "A" (attached) be amended to provide the Cabinet Committee on Security and Intelligence and the Cabinet with clear recommendations or alternatives for the effective operation of the Security Review Board, and to provide the Department of Justice with adequate instructions for drafting the necessary legislation.

(f) Other Questions which may Arise During Discussion.

Attached at Appendix "B" is an estimate of the annual workload which the Security Review Board might be expected to have. This will, of course, vary depending on governmental decisions as to which categories of persons should be given a right of recourse to the Board.

D.F. Wall  
Secretary of the Security Panel.

Privy Council Office.

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DRAFT MEMORANDUM FOR THE CABINET

I. Title - The Security Review Board Act

II. Background

(To be prepared on the basis of the results of discussion by the Security Panel and the Cabinet Committee on Security and Intelligence)

III. Objectives

/as attached/

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III. Objectives1. Establishment of Security Review Board

It is recommended that a Security Review Board be established by an Act of Parliament.

2. Although a Security Review Board could be established by an item in the Estimates or, for cases of dismissal of public servants, under subsection 7(7) of the Financial Administration Act, the Security Panel is of the view that insofar as reasonably possible security review procedures should be dealt with under one Act. If a Review Board were to be established under subsection 7(7) of the Financial Administration Act it is the opinion of the Deputy Attorney General of Canada that problems might well be encountered relating to the requirement to give a person subject to an inquiry "an opportunity of being heard". The principle of natural justice might be invoked unless the person subject to an inquiry were given all of the facts of the case alleged against him, in which circumstances sensitive security information and sources of information could be seriously endangered. Presumably it would also be necessary to allow the person to rebut any evidence adduced against him, unless the legislation itself made clear that he could not, for security reasons, be shown all of the evidence.

Composition of Board

3. The Royal Commission recommended that the Board consist of a chairman and at least two other members to be appointed by the Governor in Council.

4. Since the number of cases to be reviewed by the Board is unknown but it appears that the volume of cases may exceed that which can reasonably be handled by any one Board it is recommended that the Board be empowered to sit

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in panels of three to hear cases. As a result it is recommended that a permanent chairman be appointed to the Board together with a panel of part-time members, the number of members being not less than three and not more than seven. One of the part-time members will be designated by the Governor in Council as vice-chairman of the Board.

5. Active members of the public service and Government officials would not be eligible for appointment.

It is recommended by the Department of Justice that the chairman of the Board be a superior court judge or a leading member of the legal profession.

6. All members of the Board will require security clearance to Special Activities level prior to appointment, as will any staff appointed <sup>to</sup> ~~by~~ the Board.

#### General Jurisdiction of Board

7. Government departments will continue to be primarily responsible for matters of security within their own departments. The Board will take the form of a super-structure that will review cases raised by any person described under the heading "Classes of Persons Who May ~~Appeal~~ to the Board" who is of the opinion that he has, for a security reason, been unjustly treated in relation to a matter set out under the heading "Grounds for Appeal". <sup>Security</sup> ~~Government~~ departments will have to have exhausted existing security review procedures before a person <sup>appealing</sup> ~~appealing~~ to the Board should be heard by them, or his case submitted to them.

#### Decisions of the Board and Governor in Council

8. The Powers of the Board will be purely of an advisory nature (unless it is decided to give it powers of decision in certain areas, e.g. immigration). When the Board reaches a conclusion in relation to a security matter, their advice based on that conclusion shall be communicated

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either to the responsible minister, to the Public Service Commission or an Appeal Board established under the Public Service Employment Act, or to whatever other authority which has powers of final decision in whatever case is being considered.

9. The decision of the appropriate decision-making authority shall be communicated to the person who has made the request for review, and also to any other appropriate minister or official of a department, corporation or agency concerned.

10. A decision of the Governor in Council in respect of any matter relating to security shall be final and there should be no right for review by any court whatsoever.

Classes of Persons Who May Appeal to the Board

11. It is recommended that the following classes of persons be given a right to request a review of their case by the Security Review Board if they consider that their rights or liberties have been infringed on security grounds:

- (a) all persons employed in the public service, including all employees as defined in section 2(1)(f) of the Public Service Employment Act and in section 2(m) of the Public Service Staff Relations Act, as well as all persons employed in crown corporations and other agencies of the federal government;
- (b) persons employed by a corporation with whom the government has entered into a contract (where access to classified material is involved);
- (c) members of the armed forces and of the R.C.M. Police;
- (d) persons who have made application for admission into Canada of a relative pursuant to regulations made under the Immigration Act;

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- (e) a landed immigrant in Canada who has been ordered deported on security grounds;
- (f) applicants for citizenship;
- (g) contracting and other employees.

Grounds for Appeal

12. It will be mandatory that where a decision is made whereby a person will have a right to request a hearing for a reason specified under this heading, the person having this right be notified of the decision and the reasons therefor and of his rights.

(a) Public Servants

It is recommended that a right to a hearing (or review) by the Board be given to any public servant where, for security reasons, ~~he has been~~ *there has been*

- (i) dismissed or released from the service;
- (ii) suspended from the service; or
- (iii) demoted within the service or appointed to a position with a lower maximum rate of pay;
- (iv) ~~transferred within the public service;~~
- (v) denied promotion;
- (vi) denied security clearance after appointment.

The Public Service Commission recommends that where a person employed in the public service has a right of appeal under section 21 or 31 of the Public Service Employment Act and there is a question of security, a board appointed by the Commission under the authority of the Act is not appropriate to hear an appeal in relation to the matter, and the matter should therefore be referred to the Security Review Board for review and advice. (The Commission has further recommended that it be consulted during the drafting of the legislation in order that the most effective relationship between the Security Review Board and boards of appeal

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established under the Public Service Employment Act might be clearly reflected in the legislation.)

(b) Persons Employed by a Corporation with Whom Her Majesty Has Entered into a Contract

It is recommended that a right of a hearing (or review) by the Board be given to any person employed by a corporation with whom Her Majesty has entered into a contract where, for security reasons associated with that contract, such person has been

- (i) dismissed by the corporation;
- (ii) suspended by the corporation;
- (iii) demoted within the corporation; or
- (iv) denied a promotion, ~~or is transferred~~ for security reasons.

(c) Members of the Armed Forces and the R.C.M.P.

It is recommended that a right of a hearing (or review) by the Board be given to any officer or man of the armed forces or the R.C.M.P. where, for security reasons, ~~he has been~~ <sup>he has been</sup>

- (i) dismissed from the armed forces or R.C.M.P.;
- (ii) suspended by the armed forces or R.C.M.P.;
- (iii) demoted within the armed forces or R.C.M.P.;
- or
- (iv) denied a promotion.

(d) Persons Who Have Made Application for Admission Into Canada of a Relative Pursuant to Regulations Made Under the Immigration Act

It is recommended that a right of a hearing (or review) by the Board be given to such a person where there has been a refusal, on security grounds, to approve the application for admission. It is for consideration whether the Immigration Appeal Board should continue to have jurisdiction to deal with matters relating to security in such cases.

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(e) Applicants for Citizenship

It is recommended that a right of a hearing (or review) be given to such a person where the Minister responsible for citizenship is, for security reasons, considering refusal to grant a certificate of citizenship to him.

Hearing of Appeals

It is recommended that there be no right to confront or to cross-examine witnesses appearing before the Board but that the Board may direct any questions to witnesses.

It is further recommended that the Board may hear any evidence in the absence of the appellant and his representative and that only such portion of any evidence so heard may be disclosed to the appellant or his representative as, ~~in the opinion of the Board~~, will not jeopardize any source of security information that should, in the interest of the safety of Canada or any state allied or associated with Canada, be concealed.

The rules of procedure to be followed by the Board shall be enacted by the Board with the approval of the Governor in Council, but the Board shall act in camera.

Powers of Governor in Council

The Governor in Council should be empowered to direct that any case or class of cases involving a matter of security be reviewed by the Security Review Board.

Consequential Amendments

(a) Financial Administration Act

Subsections 7(7) and 7(8) of the Act, relating to dismissal from the public service will be repealed since the subject matter of these subsections will be embodied in the proposed legislation.

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(b) Public Service Employment Act

Sections 21 and 31 of the Act will require amendment in order to provide for review by the Security Review Board in the cases referred to in paragraph (a) under the heading "Grounds for Appeal".

(c) Public Service Staff Relations Act, and Board Regulations with Regard to Adjudicator

As grievances against dismissals and suspensions are dealt with by Adjudicator appointed by the Public Service Staff Relations Board, it is recommended that the Treasury Board Staff be consulted during drafting to determine whether amendments to the Public Service Staff Relations Act and Regulations may be necessary.

(d) Immigration Appeal Board Act

Certain sections of the Act may have to be amended as a result of the proposal contained in paragraph (d) under the heading "Grounds for Appeal", and as a result of the substantive proposal made below for amendments to the Immigration Act and Regulations.

(e) Immigration Act and Regulations

It is recommended that consideration be given to amending this Act to provide that where

- (i) a person who has been allowed to enter and remain in Canada as a non-immigrant and who is applying for landing, or

- (ii) a person who is applying for landing at a Canadian port of entry,

is the subject of an inquiry under the Act, and the Commissioner ~~or Assistant Commissioner~~ of the Royal Canadian Mounted Police provides the Special Inquiry Officer conducting the inquiry with a sworn document stating that on the basis of confidential information or material in the possession of the Royal Canadian Mounted Police the

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Commissioner or ~~Assistant Commissioner~~ is of the opinion that the person who is the subject of the inquiry is a person described in one or more of paragraphs 5(1), (m) or (n) of the Immigration Act, the Special Inquiry Officer shall accept such statement as prima facie evidence that the subject of the inquiry is a prohibited person.

Such an amendment is proposed in order that it will not be necessary to disclose sensitive security information to Special Inquiry Officers in order to obtain deportation orders. The relevant information would of course be made available to the Security Review Board if an appeal were made to the Board by the person who is ordered deported as a result of the document provided by the Commissioner or Assistant Commissioner of the Royal Canadian Mounted Police.

(f) National Defence Act

Several sections of the Act may require amendment as a result of the proposals contained in paragraph (c) under the heading "Grounds for Appeal".

(g) Canadian Citizenship Act

An amendment may be required to the Act to provide that the Governor in Council may, in his discretion, order that any person not be granted a certificate of citizenship if, upon a report from the Security Review Board, he is satisfied that such person is a security risk.

Recommendation

It is recommended that authority be given to instruct the Department of Justice to prepare the necessary legislation for the purpose of having the above proposals enacted during the current session of Parliament.

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## Appendix "B" to SP-239

ESTIMATED ANNUAL WORKLOAD OF THE SECURITY REVIEW BOARD

Employment	15
Immigration	( 240 )
Citizenship	<u>100</u>
Total	355

*(could be double)*

(Note: These figures assume that access to the Board will be open to all of the categories set out in Appendix "A".)

Privy Council Office  
O t t a w a.  
July 6, 1970.