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CONFIDENTIAL

April 18, 1978.

Draft statement for use in tabling the personnel security clearance directive

I wish to table copies, in both official languages, of a directive recently approved by the government, setting out policy and procedures to be followed by departments and agencies concerning the security clearance of persons who are considered for access to classified information.

In October, 1963, Prime Minister Pearson outlined in the House of Commons a policy and procedure in this matter. While there has been some criticism over the years concerning the policy and its implementation, I think it has generally served Canada well. Within that framework, it has been possible to reconcile the basic rights of the individual with the generally accepted need for the protection of information, the unauthorized disclosure of which could affect national security adversely.

With the passage of time the security threat has changed, and has grown more complex, but it has not diminished. Recent documented espionage activity in Canada has been brought to the attention of this House and the public which confirm the need for continuing vigilance to ensure the loyalty of persons with access to information involving national security. Mention should also be made of the frightening development of terrorist activity and various forms of subversion on a world-wide scale.

Concurrent with these developments has been a growing interest in, and articulation of, human rights in all forms. Parliament has, I think made important contributions in this respect. The document I am tabling is intended to provide, in the area of public service personnel, the protection considered necessary in current circumstances, and in view of the continuing and changing threat, without encroaching on the rights of individual Canadians.

I would like to say a few words about the main features of the directive.

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riteria for security clearance

The directive, like its predecessor, states the Government's responsibility to ensure the loyalty and reliability of persons in positions requiring access to classified information, and provides (in Annex A) criteria on the basis of which decisions on security clearance can be made. The criteria are set out in relation to "loyalty" and "reliability".

Those related to loyalty are intended to be consistent with the definition of "subversive activity" in the Official Secrets Act and with criteria used in the security provisions of the immigration program.

In the "reliability" category are set out those human characteristics which, it is considered, must be taken into account in deciding on access to information concerning national security. The examples set out a[illegible]arice, indebtedness, sexual behaviour, alcohol or drug abuse, m[illegible]al instability or criminal activity."

Sexual behaviour

Of these, the most difficult and delicate is "sexual behaviour' Its relationship to the security screening program is often questioned and criticized. Because of this, I think I should say a few words. Obviously the public have a right to know the position of the government on this subject, which is of such interest in the context of human rights and elimination of discrimination, but which is, at the same time of continuing, demonstrated security concern.

Government has a responsibility to try to ensure the suitability of the persons it employs for the duties involved. Where there are reasonable grounds to believe that an individual's behaviour, including sexual behaviour, is such that it might cause the person to be indiscreet or vulnerable to blackmail, careful consideration must be given before access to classified information can be granted.

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The area of particular difficulty is employment outside the country where, in some cases, laws may involve sanctions which do not exist in Canada in comparable situations. If behaviour is likely to interfere with the service which the public has a right to expect, it must be a factor in determining the suitability of an individual for employment. There is obviously an element of judgment involved, and the government has a responsibility to exercise it.

The reference to sexual behaviour in the directive is general. This is considered to be necessary and desirable, to provide flexibility in arriving at judgments in an area where situations vary enormously.

Much public attention has been given in recent years to homosexuality, particularly in the context of human rights. It will be noted that homosexuality is not singled out in the directive for particular consideration. There is no "discrimination" against homosexuals, or indeed any person, on sexual grounds. There are no categorical exclusions.

Departments* over the years have experienced great difficulty in applying personnel security clearance policy in relation to sexual behaviour. Members will recall cases that have received publicity from time to time where departmental practices and decisions have been much critized. It seems appropriate therefore that the government use this occasion, when a new directive on personnel security clearance is being introduced, to provide departments, at the same time, with guidelines to assist them in making security clearance decisions where sexual behaviour is a factor.

Separatist beliefs

Now I would like to mention briefly another difficult subject which also relates to security, and access to classified information. I refer to employment in the federal government of

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* This paragraph can be omitted if it is decided to abandon the guidelines.

persons who are strongly committed to separatist beliefs. Here, I think, a federal government must try to reconcile freedom of expression, the right to hold any views, to express any opinions, to engage in any activities which are not illegal, with a reasonable insistance that its employee accept the desirability of the continuing existence of the country in a broad sense. It will be recalled that the 1969 royal commission report addressed itself to separatism in the security context, and recommended that "the federal government should take (and be seen to take) steps to prevent its infiltration by persons who are clearly committed to the dissolution of Canada, or who are involved with elements of the separatist movement in which seditious activity or foreign involvement are factors ..."

It has been very difficult to find precise words to define the problem and to make provision for it in the directive. In drawing up the criteria for security clearance, we were conscious of the distinction between persons committed to fundamental constitutional change involving the break up of the country as presently constituted, by peaceful and legal means, and persons who would resort to violence and subversion to achieve their goals. Nevertheless, we consider that any government with a responsibility for the existence of the country it serves, must take separatist commitments into consideration when deciding on access to information of importance to national security. A requirement is therefore made in the directive for the deputy head to make a judgment in this regard, with respect to access to classified information. I would emphasize that there is no blanket exclusion of persons with separatist convictions from the public service. But it is reasonable and necessary for the government of a country to recognize the security problem where persons are committed to its breakup.

Personnel security clearance questionnaire

The directive incorporates (in Annex B) a Personnel Security Clearance Questionnaire to replace the Personal History

Form approved in 1963. The latter has been the subject of periodic criticism over the years, mainly on the grounds that some, at least, of the questions are an unnecessary intrusion into privacy, and seem unrelated to the duties of the employment involved. Part of the problem has been that the Personal History Form, which was authorized specifically in relation to security clearances, has been used in some cases as a general employment form, to establish reliability outside the context of national security. The revised form points up the requirement that it be used only in relation to security clearances. The questions have been revised to be less offensive and more currently relevant. Stress is placed in the form, and in the directive, on the fact that access to information supplied will be strictly limited, and the records destroyed when they no longer serve the purpose for which they were supplied.

Minimum standards for personnel security clearance

The investigation procedures required for the degrees of access to classified information - Top Secret, Secret and Confidential, are set out in Annex C. There is little change from the 1963 provision. Field investigation, records check, and fingerprint check are required for Top Secret clearance; records check and fingerprint check for Secret and Confidential. The classifications referred to are those which have been in use since World War II, and which closely parallel the ones in use in other countries. The problem is that in some cases they have been interpreted too broadly, and applied where national security is not directly involved. Care will be taken to guard against this tendency in the administration of the new directive.

Fairness and frankness

The revised directive re-states the arrangements announced by Prime Minister Pearson in 1963 to ensure a maximum of frankness with the public servant when it is considered necessary to deny security clearance (particularly if dismissal

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is considered). Mr. Pearson emphasized a "second look" (by senior officials) to review dismissal cases. This mechanism has been superseded by the Public Service Security Inquiry Regulations approved in March 1975, pursuant to the Financial Administration Act, which provides for review by a commissioner appointed by the Governor in Council. As in 1963, there is emphasis on making available to the employee as much as possible of the information causing doubt about loyalty or reliability "without jeopardizing sensitive sources of security information". This qualification, distasteful as it is, is considered unavoidable if security investigations are to be effective. The problem is, of course, now eased with respect to situations in which dismissal is considered, and the public servant wishes to invoke the inquiry procedure set out in the Public Service Security Inquiry Regulations. In such cases, all information would be made available to the commissioner conducting the inquiry. The human rights legislation also provides increased protection for the individual.

The government has given careful consideration to the desirability of making the "frankness" provisions in the directive, and in the regulations, applicable in the case of applicants for public service employment. Such an extension would, of course, greatly increase the administrative requirements of the program. This must be weighed against the fact that, in the case of an applicant who is refused employment on security grounds, damage cannot result for the individual if the reasons for unsuitability are not disclosed. The government has therefore decided that the provisions relating to disclosure of security information to the individual should not be extended to applicants for employment in the public service. Its position is consistent with the view of the 1969 royal commission in this regard.

The private sector

The revised directive continues the application of the security clearance policy to all persons - not just public servants - being considered for access to classified information. However the

revision makes specific provision for extending the "fairness and frankness" aspects to persons in the private sector. (CD35 is silent on this.) The difficulty is that, while the government as employer can set out and enforce these procedures in the case of public servants, in the case of employees in the private sector it can only directly enforce that part of the policy concering grant or denial of access. It is difficult to make mandatory, for non-public servants whose employer is not the government, the provisions for protecting the individual - the right to information, and to a hearing. The revised directive deals with this problem by requiring departments, when entering into agreements for work to be performed outside the public service, to ensure that the procedures in the directive will apply as fully as possible. It is intended, in advising departments on the implementation of the new directive, to provide specific direction in this regard.

Fingerprinting

The revised directive makes mandatory provision for fingerprinting of all persons being considered for access to classified information. CD35 specifically excluded persons in defence industry. This exclusion has always caused problems (particularly where Canada has responsibility for classified information supplied by other countries). It is realized that the extension of this requirement will be distasteful for those persons affected. However, it is clearly fair that the requirement should be the same in all cases. I would add that fingerprinting, whic is recognized as the best means of establishing identification, is widely accepted and applied in these circumstances in many countries.

Security classifications

I have mentioned that the policies and procedures set out in the directive are related to the definitions of

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classified information which are presently in force. I should add that the system of classification is under review in the context of the Green Paper on public access to government documents published by the Secretary of State. The existing classifications, established in the post-war years, were intended to apply to the protection of "national security" information in a strict sense: relating mainly to defence and international relations. Over the years there has been a tendency to interpret them too widely, to apply them to a broad range of information, much of which, while requiring protection, was not intended to invoke the security screening procedures, particularly those relating to loyalty, set out in CD 35 and the proposed revision. There is clearly a need for a better definition of national security, and, in addition for identification of other kinds of "sensitive" information which requires some degree of protection. Better enunciation and application of definitions will no doubt reduce the amount of information requiring protection, and the number of security clearances required.

Conclusion

I have referred to the criticisms that have been directed over the years at the security screening policy and procedures of the government - particularly where errors have been made. I am sure that no government, particularly a government serving a democratic society, takes pleasure in devising and applying such policies and procedures. However, I think it is generally recognized that there is a need for security, and government must assume responsibility in this regard, while at the same time exercising continuing care to ensure that individual rights are respected. I believe that the directive I have tabled represents a reasonable basis for ensuring that these aims are achieved.