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MEMORANDUM TO THE CABINET COMMITTEE
ON SECURITY AND INTELLIGENCE

Security Review Order

1. During the years 1956 to 1959 the Interdepartmental Security Panel intensively studied the possibility of establishing a procedure by which government employees whose loyalty was in doubt could be given an opportunity of appearing before an impartial board and answering the information against them. In mid-1959, the Panel prepared for consideration by the government a draft order-in-council setting out a system of review which the members of the Panel considered was the best that could be devised under the circumstances. A copy of this draft order is attached.

2. The idea at the core of Canadian security policy has always been that security is a part of good administration, and that it is therefore a departmental and agency responsibility. Since 1947, the government has from time to time given departments and agencies a general direction, in the form of a Cabinet Directive, as to the policies and procedures to be followed in ensuring the security of classified information for which they are responsible. On the basis that the central requirement for the maintenance of good security was the establishment, insofar as that is possible, of the loyalty and reliability of employees who were given access to classified information in the performance of their duties, successive Cabinet directives have posed departments and agencies with the responsibility of having inquiries made to this end. While some information concerning an employee's ability to perform his duties is normally made available to employing departments or agencies during the induction process, his loyalty and reliability are normally established to the satisfaction of the employing organization by their requesting the R.C.M. Police to conduct an investigation into the employee's background. Depending upon the level of access required, this investigation might involve a search of the subversive and fingerprint records of the R.C.M. Police in order to establish whether there had been any subversive or criminal activity, or, in addition, a full background investigation conducted in those areas in which the employee had lived and worked. On the basis of examining the results of these investigations, and such other relevant information as is available, departments and agencies arrive at a judgement as to whether or not the employee might safely be given access to classified information. In cases where information of a derogatory nature is turned up, and where the department or agency is in doubt as to how it might be resolved, the advice of the Security Panel or its sub-committee may be sought.

*Ch. H. ...
a declaration - in
regard to appeal -
between investigation
prior to appeal
& after appeal*

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22 appeal
... to the most*

3. On the whole, this system has worked well. The approach to these problems is normally quiet, informal and humane, and it has only been rarely that, through error or inept action, employees have been treated unjustly, or have appeared to have been so treated. Numerically, over the past seven years there have been an average of some 22 dismissals per year from the public service, including the Armed Services and the R.C.M. Police, for reasons of security. Considering that an average of some 43,000 investigations are made annually for the purpose of screening public servants for security, the number of dismissals is comparatively very small. It should be pointed out in addition that, of the average number of 22 persons dismissed in a year, there are normally only one or two, and at the most three, who make representation to the government, either directly or through members of Parliament or the mass media, asking for the reasons for their dismissal or indicating that they feel they have been dismissed for insufficient reason. The most serious difficulties have normally arisen when the sources of the derogatory information which gave rise to the dismissal were so sensitively placed that the employee could not be given the information, and the employing department felt it must dismiss him in order to discharge its security responsibilities.

4. This difficulty about the necessity to protect sensitive sources of security information has been one of the primary reasons why it has not been possible to devise an appeal system for security cases which would provide the substance as well as the form of a proper appeal. Over the years the R.C.M. Police have painstakingly developed, and must continue to develop, sources of information within the communist movement in Canada. The Force has a real obligation, not only to the sources themselves but also to the government, to protect the identity of these sources in order that they might continue to provide information necessary to the process of judging the reliability of government employees required to do secret work. It is clear that the identity of such sources would be jeopardized by any formal system of appeal, which, in order to provide any substantial appeal benefits in the legal sense, would require these sources to appear for confrontation and cross-examination.

*Why?
appeal
appears
before a
Board only*

5. The attached draft Security Review Order was drawn up at the government's request in 1959, and although the Security Panel could not recommend that it be introduced, it was considered to be the best system of review that could be devised under the circumstances. It was designed to be applied to cases of dismissal from the Civil Service proper on grounds of known or suspected subversive activity. For practical reasons, it was not intended to apply to the denial of employment on security grounds. It was considered however that, were the government to introduce such a system, it could if necessary be later extended to all civilians in the public service. The Armed Services were intended to be excluded, for the reason that the Queen's Regulations and Orders for the Canadian Forces provide adequate means of review and grievance procedures in any circumstances where an officer or man considers he has suffered any personal oppression, injustice or other ill-treatment. These channels of review and grievance lead to the Minister in the case of a man, and to the Governor-in-Council in the case of a commissioned officer. By the same token, the R.C.M. Police were intended to be excluded as the R.C.M. Police Act and its attendant regulations provide channels of review and grievance leading to the Commissioner, who under the Act has the authority and responsibility for such disciplinary measures, including dismissal, as are necessary

*These recent
cases re new
R.C.M.P.
reviewed in
this way*

to ensure the suitability of members of the Force. It was further intended to exclude defence industry, chiefly on the grounds that the dismissal of any employee of an industrial firm was a matter in which it would be quite inappropriate for the government, or a review board set up by the government, to interfere. Even if this problem were to some degree overcome, the introduction of a system of appeal would seriously complicate the collective bargaining process between management and labour, particularly where communist-dominated unions were concerned.

6. The Committee's attention is also drawn to the fact that the attached draft Order was not intended to cover cases in which an employee's reliability was in doubt because of some facet of his character such as drunkenness, greed, homosexuality or drug addiction, which might affect his behaviour to the detriment of good security. In cases of this kind, it is normally possible to establish such characteristics as matters of fact, after which an employing department must determine the relevance of such behaviour to the preservation of departmental security. This is usually done by discussing the problem quite openly with the employee, and arriving at an acceptable solution. It was therefore considered unnecessary, and indeed inappropriate, to make such cases subject to any formal appeal.

7. In summary, then, the immediate difficulties which the Security Panel foresaw in the implementation of the attached draft Security Review Order were:

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as present pressure
to do something*
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work*

- (a) that the government would be subject to continuing pressures for the extension of the proposal to include fully judicial safeguards for the employee, which would inevitably compromise vital sources of security information;
- (b) that the government would also be subject to pressures for the extension of the plan to members of the Armed Services, who have their own established grievance procedures, and further to the employees of private firms engaged on secret or confidential contracts, thus creating further difficulties in the field of labour - management relations;
- (c) that the operations of the proposed procedure would undermine the established managerial responsibilities and practices through the public service; and
- (d) because of these dangers, that departments would tend to seek other methods of dealing with security cases in order to avoid making use of a mandatory system of review by a body outside the public service.

8. The Security Panel therefore reported:

- (a) that, after considering the probable consequences of introducing a system of security review such as that set out in the draft

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Security Review Order under consideration,
it could not recommend its introduction;

- (b) that if the government nevertheless decided to introduce a system of security review, the system set out in the attached draft Order appeared to be as good a system as could be devised;
- (c) that there might be merit in the government considering the adoption of a less formal arrangement, by which outside advice on difficult security cases could be obtained on an ad hoc basis when it was considered appropriate.

What does this mean

9. Following receipt of this advice, the government took no decision to introduce a review procedure such as that under consideration.

10. At meetings held on June 21st and June 28th, 1963, the Security Panel again considered the feasibility of introducing a system of review and appeal such as that set out in the attached draft Order. The Panel reaffirmed the views reported to the government in 1959, and again concluded that it could not recommend the introduction of such procedures. If, notwithstanding these views, the government considered it must introduce some formal system of appeal, the Panel agreed that the precise terms of the attached draft Order should be studied again in detail.

Has this been done

11. It is therefore recommended that the Cabinet Committee consider:

- (a) whether it would be appropriate at this time to introduce a system of security review such as that set out in the attached draft order-in-council, bearing in mind the views expressed by the Security Panel; or
- (b) whether it would not be more appropriate to institute the administrative measures for careful review of security cases and, wherever possible, the actual confrontation of employees with adverse security records, as set out in the revised draft of the Cabinet Directive on Security presently under consideration.

Is this (C) above

R. G. Robertson,
Chairman of the Security Panel.

Privy Council Office,
July 17th, 1963.