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DISPOSAL OF ADVERSE CASES

1976 - 1980

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FOREWORD

1. This is the third report on the subject. The earlier ones were prepared and issued in 1974 and 1976.

2. The attached covers a five-year period, 1976-1980 inclusive. The extended period between reports was not intended; it simply reflects the obvious limitations of an irreducibly small secretariat security staff. The five-year period, however, makes it possible to give a clearer picture of the situation generally than was the case in earlier reports. At this juncture, when security clearance policy review in a final form must follow closely behind the proclamation of an Access to Information Act and a Privacy Act, and the publication of the McDonald Commission report, the attached report with its statistics and remarks should be seriously considered in the policy development process. The report points to major flaws, weaknesses and inconsistencies in a system which has been followed slavishly for more than thirty years. While C.D. 35 and the Public Service Security Inquiry Regulations (1975) introduced and affirmed the career interests of the subject person in the decision-making process, nothing in policy has in fact been introduced since 1948 to substantially modify the principles upon which government material is classified and the personal security clearance process which applies to the employees in positions of access.

SAC should be responsible for this type of report.

If SAC, with all its interdepartmental resources had been responsible for this system, perhaps these problems would not have occurred.

3. C.D. 4 through to C.D. 29, the personnel security clearance policy documents which preceded C.D. 35 had been prepared in response to Communist aggression, namely the infiltration/recruitment of Soviet agents in Canada as revealed by the Kellock-Taschereau Commission (1946) and the court trials

which followed, events which led to the apprehension later of Soviet spies in the U.S.A. and the United Kingdom and the loss of U.S. atomic secrets which had brought the Second World War to an end and held promise to keep the forces of Communism in check.

4. The Berlin blockade and the coup in Czechoslovakia in 1948 were clear demonstration that the Soviet Union would use force just short of war in the pursuit of its aims and this led to the formation of NATO. In the intervening years, on another continent, there had been the final defeat of the Chinese Nationalist forces by Mao's Communist armies in 1949. And a year later, the crossing of the 38th parallel by the Korean Communist forces led to a war in which Canada became involved with the U.S. and Commonwealth forces. In other words, from the mid forties to the mid-fifties no one was prepared to argue against any reasonable government policy aimed at protecting our independence and freedoms within the Western community of nations.

5. Security measures should exist to counter a threat of sorts - real or apprehended: they must be capable of reasonable definition in a current context, something that employees of all ages and backgrounds can understand and keep in mind in the discharge of their duties.

6. More than half of the serving employees of the Government of Canada do not even remember the Korean War. They may fear the Soviet military machine but they do not fear the Communist ideology as a means to a political end; indeed it is difficult to find someone who, nowadays, cares about any 'ism that imposes discipline on its adherents. Loyalty to government is old-fashioned;

Statements like these are based only on opinions and therefore they detract from the factual effectiveness of the report

few seek a lifelong career in public service so there is no real concern or, in fact, little risk of losing job security when acting in a disloyal manner in a non-defence or security context. The incidence of leaks of Cabinet and related documents that are only available to public servants, particularly since 1971, is eloquent proof that nothing in the government process is sacred any more.

7. What is the nature of the threat and is it within rather than without? What have we done to identify it and negate it?

8. The primary purpose of the personnel security clearance policy conceived more than thirty years ago was to identify Communists (members of Communist parties), Communist sympathizers and collaborators, in other words, the Enemy within. Subsequent policy statements identified as an added dimension to the Communist threat, the person who could be made to collaborate by exploiting his/her character defect/s or weakness/es. The policy, weighted for 15 years exclusively in the "interest of the state" was modified in 1963 to provide a measure of protection for the government employee against biased or hasty judgement by making it mandatory that adverse cases be reviewed by senior management before dismissal could be recommended to the minister by the deputy minister or head of agency. In 1975, this review process was further refined by the introduction of the Public Service Security Inquiry Regulations made pursuant to subsection 7(7) of the Financial Administration Act which requires the review of a case for dismissal on security grounds to be made by a Commissioner appointed by Order-in-Council and for dismissal only under authority of the Governor-in-Council.

9. Some "old hands" may argue that the mandatory review process introduced in C.D. 35 destroyed the tight rein on security which had been held traditionally by a few security officers, to place decision-making in the hands of a "soft" management class of public servants; security officers, heretofore, had derived their authority to make decisions in adverse cases from C.D. 29 which made it categorically clear that a doubt, "in the mind of a reasonable man" regarding loyalty and reliability raised and unresolved in the course of a security clearance inquiry, would be resolved in favor of the state. Many careers were cut short in the process and valuable employees lost who might otherwise have been salvaged by a more demanding review procedure and management involvement.

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10. Under the rules of C.D. 29 there were also serious inconsistencies; even within D.N.D. where the Army and Air Force, each with their own investigative elements, would conduct far more searching security inquiries than was the case with the Navy that did not have an investigative arm. In theory as well as in practice one could have been granted a SECRET clearance by the Navy and denied a similar clearance by the Army. It went beyond this; there was great security rigidity in the R & D elements of the armed forces, a factor which was quickly eroded when plans were put in the hands of defence industry for production where the security clearance criteria were far less rigid. If one were to look closely at the security practices throughout the government in the 1960's one would find that many departments

simply turned a blind eye to the security policy on the basis that they were not involved in national security matters; "national security" became conveniently the object of the narrowest possible interpretation. The situation became ludicrous. The point to be made is that in the course of that decade, the government was open to infiltration in probably more than 80% of its middle and upper level management positions.

"National Security" should be the object of the narrowest interpretation because of the accompanying rigid methods of protection. There is the need, however, for another category in which to classify assets which require less rigid methods of protection. The SPUR classification system proposes the "public interest" category for this purpose.

11. The situation started to change dramatically in 1968, the last year of the Royal Commission on Security. It would appear that the investigative activities of the Commission left many senior managers with a feeling that they ought to have a departmental/agency security programme so as not to be caught at fault and criticized by the Commission. In some departments it meant a 180° turn; from a position of no need to one where it became essential to be seen practicing security by classifying more material and clearing more employees.

12. In terms of personnel security, the demands for services from the R.C.M.P. shot up dramatically and some departments decided that all personnel should be cleared. Most focussed their needs in the SECRET and CONFIDENTIAL levels of clearance but it became common practice to clear anyone of the level of director or equivalent and upwards to the TOP SECRET level.

13. This revised practice while doing much to close the wide unprotected gap of the 1960's created a new set of problems while reinforcing older ones. A new motto seemed to emerge which could have read: Be secure - clear everyone.

Instead of making efforts to discourage this kind of attitude by management, by explaining the limitations of the security clearance investigation process, security officers accepted the commitment and built up on it, at least until 1978 when they were forced to retrench by reason of the coming into effect of the Human Rights Act and particularly its Part IV which conferred a right to anyone to access a government information bank in which they were identified and made exemptions difficult.

In practical security terms this suggested strongly that it would be difficult or embarrassing to exempt security clearance files on employees who did not, in fact, have or require access.

14. The more serious effect on the quality and effectiveness of security, particularly of security of information in the government, has been caused by an abuse of the security classification system compounded by an abuse of the personnel security clearance procedure.

15. It was said earlier that concurrent with the investigative activities of the Royal Commission on Security or as a consequence thereof, there was a general awakening to security. As more documents were classified there was a need for more employees to administer the material and, therefore, to be security cleared. As more employees were security cleared, there appeared to be a lesser need to be concerned with the "need to know" principle and for the segregation of classified material of a particularly sensitive nature; "security clearance" became synonymous with "unqualified/unlimited trustworthiness". It should

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come as no surprise if it should be revealed at some point that the perpetrators of all our deliberate leaks of documents were employees holding a security clearance granted probably on the minimum standards of investigation.

It does not necessarily follow that if employees were properly investigated, leaks would not occur. There is very little relationship because leaks occur for many unrelated reasons.

16. The security problems we are experiencing today can be charged to two very fundamental things:

- a) the "negative" character of security; and
- b) the lack of interest and understanding of security by managers.

17. Security is "negative" when it does not appear to have a natural place in an activity. The need for and the content of a security programme will vary a great deal from one department to another.

"People oriented" departments and agencies obviously do not have the same need for security of information than would necessarily be the case in D.N.D., the R.C.M.P. or External Affairs. Physical security measures must, of necessity, be far more stringent in the Bank of Canada and the Royal Canadian Mint than they need to be in a Manpower office. Security of communications is a basic requirement for the conduct of our foreign affairs through our missions abroad but it does not have the same importance for the Department of Agriculture. Security becomes "negative" when the reason/s for the security measures insisted upon are not readily apparent and lead to unnecessary efforts and expense and possibly delays in the delivery of material or provision of services. It can also prove negative to those involved when it appears to become uselessly and persistently repetitive and no reason is given for the measures.

The two-category classification system, proposed in the SPUR Policy will correct these problems.

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18. By and large managers are happy to leave security to security officers. Security suggests rules, discipline, rigidity, narrow-mindedness, petty-details; career oriented managers have not much inclination to get involved in the muddled field of security and are generally content to seek advice on security as they may need it but rare indeed is the manager in a line department who has seriously assessed the place for security in his operation without being prompted or prodded by a higher-level manager. Departments/agencies may have security policy, instructions, guidelines, equipment, guards, etc., but the quality of implementation never reaches its proper level because of a general lack of management interest, understanding and support.

19. It is too easy to blame the managerial group for the shortcomings of security in the Government of Canada. If they lack interest and fail to provide leadership it is because their own professional development has included, at best, a very meagre dose of security knowledge, not enough to give them assurance in this area. However, all government security policy and directives charge departments and agencies with security responsibility and, in practical terms, this means all managers from the DM or Head down to the last director and chief. Security officers are technicians who will assist managers in living up to their security responsibilities - they cannot legitimately or reasonably be made responsible for departmental security as is often implied.

The SPUR proposals give the responsibility for security to the deputy head of a department or agency.

20. The report on Adverse Cases does not by any stretch of the imagination give an indication of the state of security in the public service but, as was said earlier, it is food for thought. It will have been useless like the earlier ones, however, if it does not raise many questions to which real answers will be sought.