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The policies which governed the granting and denial of security clearances within Canada remained virtually unchanged for over twenty years. In 1984, however, the Canadian Security Intelligence Service Act introduced a Formal Review Committee to hear complaints from those who were denied clearances. This accelerated further in April of 1986 when the Treasury Board introduced a new federal policy on security screening. These two events led to new obligations on commanders and managers and have initiated a process to re-examine the procedures and considerations which determine whether an individual will receive a security clearance.

Commanding Officers, Managers, Officers, and applicants for security clearances are advised to refer to this document for information on the application of the new policy and, as they are applicable to both the civilian and military members of the Department of National Defence and the members of the Canadian Forces, the proper publication for their possession is the "Security Orders for the Department of National Defence - 4-2 J-100-971/12-000". The steps necessary to update these orders are indeed being taken but as the re-publication of a major document is a lengthy process, this booklet has been produced to provide interim guidance.

**THE GRANTING AND DENIAL OF
SECURITY CLEARANCES**

**AN INTERIM GUIDE TO
OBLIGATIONS, RIGHTS AND PROCEDURES**

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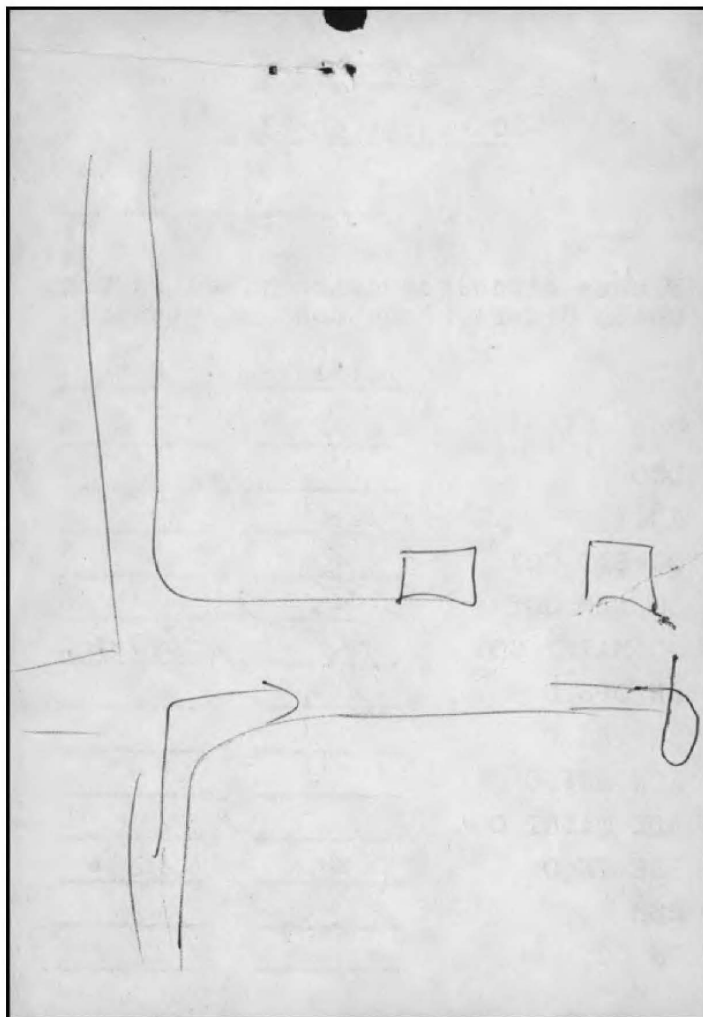
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FOREWORD

The policies which governed the granting and denial of security clearances within Canada remained virtually unchanged for over twenty years. In 1984, however, the Canadian Security Intelligence Service Act introduced a formal Review Committee to hear complaints from those who were denied clearances. Change accelerated further in April of 1986 when the Treasury Board issued a new federal policy on security screening. These two events impose new obligations on commanders and managers and have initiated an overdue move to de-mystify the procedures and considerations which determine whether an individual will receive a security clearance.

Commanding Officers, Civilian Personnel Officers, and applicants for security clearances have an immediate requirement for information on the application of these new policies and, as they are applicable to both the civilian employees of the Department of National Defence and the members of the Canadian Forces, the proper publication for their promulgation is the "Security Orders for the Department of National Defence - A-S J-100-001/AS-000". The steps necessary to update these orders are indeed being taken but as the republication of a major document is a lengthy process, this booklet has been produced to provide interim guidance.

Readers are reminded that this booklet is a precis only and that the development of policy or legal interpretation must be conducted with reference to the source documents and not this synopsis of the material which they contain.

THIS BOOKLET WILL BECOME OUTDATED UPON THE PUBLICATION OF DEPARTMENTAL SECURITY ORDERS OR ON 1 JAN 88 WHICHEVER OCCURS FIRST. IT SHOULD BE DESTROYED AT THAT TIME.

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REFERENCES

- A THE CANADIAN SECURITY INTELLIGENCE SERVICE ACT (CSIS ACT)
Passed 21 Jun 84
- B A SECURITY POLICY OF THE GOVERNMENT OF CANADA
18 Jun 86
- C SECURITY ORDERS FOR THE DEPARTMENT OF NATIONAL DEFENCE
Volume 1 - General - A-SJ-100-001/AS-000 amended to
Change 8 4 Jan 82.
- D CANFORGEN 021/85 OF 091800Z Sep 85
- E CIS 005 OF 121200Z FEB 86 (forwarded to AIG 1702)
- F DPCA 5431 042030Z JUN 86
- G 2140-1 (CPCSA) dated 22 Jan 86
- H QR & O Article 19.27
- J CFAO 19-32

CHAPTER 1

INTRODUCTION

Security and Reliability Screening

101. Reference B introduces a two tier screening system to protect government assets and information. In the future the familiar classifications of Confidential, Secret and Top Secret will be reserved exclusively for information the release of which could cause injury to the security of the nation. Information which was hitherto classified to ensure privacy, prevent the premature release of information not related to security, or avoid embarrassment to individuals or agencies will now be termed "protected information" and will no longer demand that those requiring access to it have security clearances. In order to ensure that this protected information, as well as all assets of value to the government, are properly protected, all new public servants will be required to submit to a "Reliability Check" consisting of a review of their identifying detail, employment history and reputation, character references and a criminal records check. For some positions an "Enhanced Reliability Check" will be required which will add a credit check to the criteria. These mandatory reliability checks will produce some of the information to be used if a security clearance is also required by an applicant but the checks are not, in themselves, security clearances and will not be considered further in this booklet. Their prime value to security will be the elimination of the need for many security clearances.

Security Clearance Criteria

102. Reference B provides for three levels of security clearance:

- a. Level 1 - which will permit the holder access to that Confidential material which he specifically requires in the performance of his duties. Confidential material is that for which unauthorized disclosure, destruction, removal, modification or interruption could reasonably be expected to cause injury to the national interest of Canada.
- b. Level 2 - permitting required access to Secret material the above specified misuse of which could cause serious injury to the national interest.
- c. Level 3 - permitting required access to Top Secret material the misuse of which could cause exceptionally grave injury to the national interest.

103. Persons are to be denied a security clearance where there are reasonable grounds to believe:

- a. that they are engaged in, or may engage in, activities that constitute a "threat to the security of Canada" which does not include lawful advocacy, protest or dissent but does mean:
 - (1) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage;
 - (2) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person;
 - (3) activities within or relating to Canada directed toward or in support of violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state; and
 - (4) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow of the constitutionally established system of government in Canada.
- b. Because of personal beliefs, features of character, association with persons or groups considered a security threat, or family or other close ties of affection to persons living in oppressive or hostile countries they may:
 - (1) act or be induced to act in such a way as to constitute a threat to the security of Canada; or
 - (2) disclose, be induced to disclose, or cause to be disclosed in an authorized way, Government information classified in the National Interest.

104. Security clearances are based on information and where sufficient reliable information does not exist or cannot be obtained a security clearance cannot be granted.

CHAPTER 2

THE SECURITY CLEARANCE PROCESS

Requirement and Means of Application

201. The responsibility for designating the individuals and establishment positions which require security clearances and the procedures through which application is made for such clearances are not changed from that detailed at Chapter 6 of Volume 1 of Security Orders for the Department of National Defence (Reference C).

The Collection of Information

202. NDHQ/D Secur 3 is responsible for assembling the information upon which Department of National Defence security clearance decisions are based. Federal policy requires that the inquiries shown at Table 1 be conducted as a minimum.

TABLE 1 - MINIMUM SECURITY INFORMATION REQUIREMENTS

Element	Level 1	Level 2	Level 3	SA
Basic Reliability Check	X	X	X	X
Criminal Record Check (with Finger print)	X	X	X	X
CSIS Indices Check	X	X	X	X
Background Inquiries	For Cause	For Cause	10 years	20 years
Credit Check	X	X	X	X
Subject Interview	For Cause	X	X	X

203. Background Inquiries for DND are conducted by the Special Investigation Unit in accordance with CFAO 22-3. The "Subject Interview" referred to in Table 1 will impose an increased manpower bill and, consequently, the mandatory interview will not be implemented immediately. Such an interview will always be conducted, however, before authorities contemplate denying a clearance to an employee of DND or member of the CF. Ten or twenty year background investigation coverage will be reduced if this span extends into a period prior to the applicant's eighteenth birthday.

204. The elements at Table 1 are updated every five years of each security clearances's life with the exception of the basic reliability check and the subject interview. NDHQ/D Secur 3 will advise subjects, through their supporting security sections, when fresh information must be submitted for such an update.

The Security Clearance Decision

205. While commanding officers may deny their subordinates access to classified material regardless of the level of clearance they hold only deputy heads of government departments are empowered to deny security clearances. Within DND this means that the Deputy Minister is responsible for the clearances of all civilian employees while the Chief of Defence Staff makes the ultimate denial decision in the case of members of the Canadian Forces. Both Deputy Heads are advised by the Departmental Security Officer, the Chief Intelligence and Security.

206. Each application for a security clearance is reviewed by an analyst within NDHQ/D Secur 3. If the routinely collected information provides satisfactory evidence of the subject's suitability the analyst can prepare a DND 55, Security Clearance Certificate, to confirm that the clearance has been granted. Where there is insufficient evidence the analyst will task appropriate resources to further clarify the situation. This supplementary information gathering may include further record checks or interviews. Where doubts still remain, the subject will be interviewed by a security investigator and asked to comment upon the adverse indications. A senior authority within the subject's own organization may be tasked to discuss the matter with the subject and provide recommendations on the case (Reference E applies to CF members and Reference F to civilian employees). At any point during this supplementary collection process the analyst may determine that the doubts are resolved and the clearance can be granted. The analyst cannot, however, decide to deny a clearance.

207. Where security clearance analysts are unable to favourably resolve all reasonable doubts about a subject's suitability for clearance, they submit the information which they have collated to a Security Clearance Review Board (SCRB). SCRBs are convened under the authority of the Chief Intelligence and Security, who chairs them in person or approves their findings. These Boards consist of representatives of at least the rank of major or equivalent from personnel, legal, and security staffs as well as any advisors whom they request. In addition to having studied the subject's full security

208. Where a SCRB recommends that a clearance request be denied it will also suggest when the situation may be worthy of re-examination and it will recommend how the subject can best demonstrate that the problem has been resolved.

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CHAPTER 3

THE DENIAL OF A CLEARANCE

Notification

301. As soon as a SCRB judges that adverse or insufficient information will prevent an individual from receiving the level of clearance requested for his or her employment, it initiates a multi-faceted process of notification. NDHQ/D Secur will inform the career manager and direct an exclusive message to the command and base security officers who advise the individual's unit or organization and will state:

- a. the decision of the SCRB as to what level of clearance is denied and what, if any, is granted in lieu;
- b. the general nature of the reason for denial;
- c. the date, if any, on which the SCRB will reopen their review of the subject's suitability;
- d. any means by which the subject may demonstrate to a future SCRB hearing that the obstacle to such a clearance has been resolved; and
- e. that the subject is to be advised of all of these facts.

302. Upon receipt of this message commanders and staff will take necessary steps to limit the subject's access to classified information accordingly.

303. The CSIS Act (Ref A) provides that when an individual is denied employment or dismissed, demoted, or transferred or is denied a promotion or transfer for the sole reason that a deputy head decided that they could not be granted a clearance, that person may make a complaint to the Security Intelligence Review Committee (SIRC) requesting that it review the decision. When a SCRB initiates the denial of a clearance within DND, personnel staff must immediately examine the individual's career status to determine whether the above criteria apply.

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304. In the case of Regular Force members of the CF who are denied a clearance, a Career Review Board (CRB) is convened immediately after the adverse SCRB decision is rendered. The CRB will determine whether the clearance limitation will prevent the individual from acquiring further career training or restrict him or her from normal posting activity. It will examine the prospects for career progression and, if the clearance restriction will exclude the subject from more than twenty percent of the positions held by personnel of the same MOC at the next rank level or from a course which is required for promotion, the individual will be deemed to be non-promotable and restricted to his or her current terms of service. In such a case, the CRB will so advise the individual's unit within ten days of the deputy head's decision in a letter which will state:

- a. The precise career restrictions which the denial will cause; and
- b. that the subject now has the right to address to the SIRC, within thirty days, a request that it review the decision.

The notification provided to these individuals includes a requirement that they certify that they have been advised of its contents.

305. In accordance with Reference G, the ramifications of a clearance denial upon the career of a Reserve member of the CF are determined by the Senior Staff Officer responsible for individual career management at the Reserve HQ and not by a NDHQ/CRB. If career limitations result from the clearance denial alone, the subject must receive and acknowledge, within ten days of the SCRB decision, the same notification as that provided to Regular members.

306. Future career patterns are less predictable for civilian employees and CRB action to determine the consequences of a clearance denial is not possible. All denials are assumed to occasion adverse career implications and NDHQ/DCPA will automatically notify the subjects through their Base Civilian Personnel Officer.

Redress of Grievance

307. While the SIRC process precludes the use of any other grievance procedure by civilians, military subjects who wish to question limitations on their clearances have the option of submitting a grievance in accordance with References H and J. Either the security clearance restriction or the CRB decision on career action can be addressed using the same channels and procedures applicable to any other grievance.

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Complaints to the Security Intelligence Review Committee (SIRC)

308. CF members or DND employees who elect to solicit a SIRC review of security clearance action must normally forward their petition within thirty days of receiving notice of the clearance decision to:

Security Intelligence Review Committee
Post Office Box 2430
Postal Station "D"
OTTAWA, Canada
K1P 5W5

309. In preparing both this initial petition and the subsequent presentation of arguments to the Committee the complainant may wish to contact the Executive Secretary of the SIRC at (613) 990-8441 for guidance. Some complainants have hired, at their own expense, civilian lawyers but union members will normally find that their union is prepared to assist if requested and military members may have their CO appoint an officer to advise them. Such counsel, civilian or military will not be transported to, or accommodated at, the hearing site at DND expense. SIRC is established to receive evidence from unassisted complainants in a manner which is less formal than that of a court and unassisted complainants are well served.

310. The SIRC is composed of up to five members of the Privy Council who are appointed by the Governor in Council from among those members who are not currently serving in the Senate or House of Commons. The Committee is formed to review the performance and operations of the Canadian Security Intelligence Service (CSIS); to hear complaints concerning the activities of CSIS; and to hear security clearance complaints. Upon receiving a security clearance complaint the Committee will appoint one of its members to review the case and confirm that the SIRC has jurisdiction to hear it. This member will request that NDHQ furnish copies of all the evidence consulted by the SCRB in formulating its decision. Within NDHQ, JAG/DLAW/HRI will review the request to confirm that DND agrees that the situation falls within the jurisdiction of the SIRC and DSecur will forward the necessary security information to the Committee while DGPCO or DGPCOR will provide career information or, for a Reserve member, alert the appropriate Reserve HQ that a brief career resume of the complainant and the results and rationale of the assessment of career limitation (see para 305) are to be forwarded to NDHQ/DSecur for onward transmission to the SIRC.

311. Canadian law prevents the SIRC from releasing information which identifies specific investigative methods or those persons who have contributed personal information. The Committee, however, will prepare a synopsis of the information provided by DND and, once DSecur

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have confirmed that its contents can be released, provide it to the complainant so that counter arguments may be prepared. Ultimately, the SIRC will advise the complainant and DND of the date and location at which verbal arguments will be heard and DSecur will advise the complainant's unit. Such hearings are normally held in Ottawa but provision exists for the Committee to hear cases elsewhere at its discretion.

Financial Provisions for SIRC Hearings

312. Transportation and travel expenses of members of the Regular Force, Primary Reserve and Supplementary Reserve, and DND civilian employees, appearing as complainants before the Security Intelligence Review Committee (SIRC), will be paid by DND. Payment of any other complainant expenses, including costs for legal services and witnesses on behalf of complainants, is the responsibility of the complainant.

313. Complainants who were members of the Regular Force, Primary Reserve and Supplementary Reserve, or DND civilian employees at the time that they were denied a security clearance, will be entitled to the transportation and travel expenses at DND expense. Any other expenses will be their own responsibility.

314. Expenses of complainants appearing before the SIRC who are neither members, or former members as set out in paragraph 313, of the Regular Force, Primary Reserve and Supplementary Reserve, nor DND civilian employees or former civilian employees as set out in paragraph 313, are the responsibility of the complainants and will not be paid by DND.

315. The transportation and travel expense entitlements for members and former members of the Regular Force, Primary Reserve and Supplementary Reserve are those set out in QR&O Chapter 209. Travel claims will be coded as follows:

Financial Account - 2201AA
Allotment - 05VB
Resource Code - 12127, Complaint costs related to appeals to the Security Intelligence Review Committee - Military Personnel.

316. The transportation and travel expense entitlements for DND civilian employees and former civilian employees are those set out in the Treasury Board Administrative Policy Manual, Chapter 370. Travel claims will be coded as follows:

Financial Account - 2201AA
Allotment - 05VB
Resource Code - 12128, Complainant costs related to appeals to the Security Intelligence Review Committee - Civilian Employees.

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317. A copy of the completed claim and a report of any necessary commercial air costs is to be returned to CIS Adm 2 at NDHQ.

318. DND is responsible for expenses of witnesses appearing before the SIRC on DND's behalf. The expenses will be paid and accounted for in the normal manner for DND administrative expenditures.

SIRC Hearings and Recommendations

319. SIRC hearings are patterned upon administrative tribunal procedures but conducted in a relaxed manner. One or more members of the Committee occupy "the bench" and a lawyer is employed by the SIRC both to advise the Committee on points of Law and to assist in ensuring that the complainant's arguments are fully and fairly presented. Evidence is taken on oath and remains confidential. The public does not attend and SIRC employees are security cleared. The nature of the evidence presented may require that the complainant be excluded from the hearing during some testimony. Only the members of SIRC have an absolute right to hear all arguments, however, both the Committee and DND endeavour to avoid such situations and, in practice, the complainant is usually present throughout. A lawyer from DLaw/HRI normally opens DND's case by having a member of the SCRB describe how the Board arrived at its opinion. Further DND witnesses may be called to support elements of the security clearance decision process or the deliberations of the CRB. The complainant is then called upon to explain his complaint which may be done by providing counter-arguments, presenting affidavits or written recommendations, calling witnesses, or any other means acceptable to the SIRC member(s) presiding.

320. The SIRC findings are not normally announced at the hearing but are forwarded, in the form of a report, to the Deputy Minister or Chief of Defence Staff with a copy, abridged as necessitated by security considerations, being provided to the complainant. The report provides a summary of the hearing and concludes with the Committee's findings and recommendations. Because the deputy head of a department bears ultimate responsibility for the security of his department, these recommendations can not be binding. Such opinion provides a second point of view from an unbiased and informed source which has devoted considerable research and investigation to the matter. Deputy heads grant them close attention in reviewing the earlier security decision. NDHQ staff examine each recommendation to establish the legal, career, and security implications of adopting the proposal. In the case of Reserve members this staffing will normally require consultation with the Reserve HQ. The results of this study are then provided to the deputy head for a decision which will be passed for information to the SIRC, the complainant's unit and appropriate NDHQ staff. Complainants will have received only the SIRC report of findings and recommendations at this point and they should be advised by their unit of the final decision taken within the DND or CF.

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CHAPTER 4

CONCLUSION

401. Security clearances are an essential element of national security. The process which permits them to be approved or, if necessary, denied is critical both to the national interest and to the individual career of each applicant and must be treated accordingly. For this reason, procedures and authorities are closely prescribed by law and government or departmental policy. While doubts about the degree of risk involved in the granting of a clearance should be resolved, in the first instance, by extensive information gathering and interview programs and then, if necessary, by a panel of senior officers drawn from a spectrum of staff experience, cases which prove to be beyond resolution must be decided in favour of national security. Although individual justice is necessarily confined to a second priority by the gravity of the alternatives, the individual is provided with the maximum protection possible by the CF redress of grievance procedure and the CSIS Act provisions for complaints to the SIRC.

402. This precis is intended to provide guidance to this maze for both individuals and staff until new government security policy is published and Reference C is rewritten. Where further information is required questions should be directed to NDHQ/CIS/DSecur 3 at 998-6988.