Annex "A" to SP-238

Recommendations of the Royal Commission on Security

Personnel Security (para. 298, Abridged Report)

(a) (1) Recommendation

"Before a person is employed in the public service, whether or not he is likely to have access to classified material, his name should be checked against the subversive records and he should be the subject of a fingerprint check against criminal records. Adverse information need not result in rejection, but the information should be made available to the employing department, which can request further inquiries if they appear to be necessary."

(2) Discussion

Attached at Annex "B" is a Report of the Public Service Commission setting out reasons for rejecting this recommendation.

(3) Decision Required

Whether or not the government should amend its present policy to require all persons entering the public service to be subject to a records check, whether or not they are likely to have access to classified information.

(b) (1) Recommendation

"All persons without exception should undergo appropriate security screening procedures before they have access to classified information or material."

(2) Discussion

This requirement is a part of current policy as set out in Cabinet Directive No. 35. There are occasions, however, where it is not met because of the urgency of appointment, or because of the failure to recognize the need for security clearance prior to appointment.

(3) Decision Required

Whether there are further measures which can be taken to ensure that the present policy of security screening prior to appointment to sensitive positions is consistently carried out.

(c) (1) Recommendation

(i) "Standards of clearance for access to classified material should be as follows:

Before a person is given access to Secret or Confidential information he should be the subject of comprehensive records checks (including subversive records, criminal records,

all relevant federal departmental records, credit bureaux records and foreign records where necessary and possible). Where written inquiries to referees or previous employers have not been made as part of a personnel selection process, this should be done. If these steps produce no adverse information, access may be granted to Secret or Confidential information after a formal and recorded departmental judgement that this access is necessary and desirable. If however any significant adverse information is developed, further investigation (including field inquiries) should be undertaken by the Security Service to confirm or resolve doubts. After inquiry, the case should be referred by the Security Service with a recommendation to the employing department for decision."

(2) Discussion

This recommendation only differs from current policy in two respects. The most significant difference is that, at present, the Security Service is not required to make a recommendation to the employing department or agency as to whether a security clearance should be granted or not. Indeed, some care has been taken to avoid doing so, based on the principle that security is a departmental responsibility, and on the established policy that the function of the Security Service is purely investigatory (C.D. 35, paras. 1 and 11). The other difference is that the present records check does not include a check of credit bureaux records. It might also be added that, while present policy requires that information about prospective employees be obtained from referees named by the persons (C.D. 35, para. 10), the policy is not consistently followed by all departments.

(3) Decisions Required

(i) Whether or not the Security Service should be asked to include with investigative reports to employing departments and agencies a recommendation on the granting or denial of security clearance, (see Recommendation D.) below);

(ii) Whether or not the inclusion of a check of credit bureaux records as part of a comprehensive records check should be made mandatory; and

(iii) Whether or not departments and agencies should be required in all cases to obtain information from referees named by prospective employees.

(c). (1) Recommendation

(ii) "Before a person is given access to Top Secret information he must be the subject of a similar comprehensive records check and a full field investigation covering a period of at least the previous ten years of his life or the period from age eighteen, whichever is shorter, and a formal and recorded departmental judgment must be made that this access is necessary and desirable.

In addition, provision must of course be made for the requirements of special clearance to levels higher than Top Secret."

(2) Discussion

This recommendation is in accordance with current policy and procedures, with the exception that there is no specific requirement for a "formal and recorded departmental judgement" that access is necessary and desirable.

(3) Decision Required

Whether current policy and procedure should be amended to include a requirement that departments and agencies formally record a judgement that access is necessary and desirable in each case.

(c) (1) Recommendation

(iii) "Clearances to Secret and Top Secret levels should be formally up-dated at regular intervals, Secret clearances by means of records checks and consultation with departmental supervisors, and Top Secret clearances by means of further field investigations. Security clearances should not be thought of as permanent and in between these up-datings supervisors of personnel handling classified matters and departmental security officers should concern themselves, if necessary in consultation with the Security Secretariat and the Security Service, with cases in which possible doubts have come to notice."

(2) Discussion

While current policy does not specifically require the formal up-dating of Secret and Top Secret clearances, it has been the practice of some of the most sensitive departments and agencies to up-date clearances approximately every five years. It should be noted here that the Security Service provides departments and agencies with any significant adverse information which is obtained after a formal security investigation has been completed and a clearance granted, thus requiring any clearance to be reconsidered in the light of such information.

(3) Decision Required

Whether or not it should be made a mandatory requirement that Secret and Top Secret clearances be up-dated at regular intervals, as recommended, or whether the present practice should be continued, perhaps with a more formal requirement that the Security Service provide departments and agencies with any pertinent information which arises after a clearance has been granted.

(d) (1) Recommendation

"Departments and agencies should remain responsible for granting clearance, but the Security Service should assist by providing information on individual cases as fully as possible, rather than in the form of abbreviated reports. In addition, the Security

Service should comment on the validity, relevance and importance of the information it provides and make a formal recommendation on whether or not clearance should be granted."

(2) Discussion

Cabinet Directive No. 35 requires that "the investigative agency ... inform departments and agencies of their investigations in the form of factual reports in which the sources have been carefully evaluated as to the reliability of the information they have provided". (para. 11). The Commissioners criticized the brevity and stereotyped form of the summaries of investigation presently provided by the Security Service, as well as their lack of explanation as to the significance of the information. (Report, paras. 111 & 112). It should be added that a number of departments and agencies have registered similar complaints over the past number of years.

As to the Security Service making a recommendation on the granting or denial of clearance, the Commissioners argue that, as in Britain, and to a greater extent in Australia, the Security Service should bear some responsibility for and advice on, the implications and significance of the data it provides. (Report, paras. 113-116).

(3) Decisions Required

(i) Whether or not the Security Service should be required to provide departments and agencies with fuller information resulting from its personnel security investigations (e.g. copies of all investigators' reports);

(ii) Whether or not the Security Service should be required to "comment on the validity, relevance and importance of the information it provides and make a formal recommendation on whether or not clearance should be granted".

(e) (1) Recommendation

"When a department decides to grant a security clearance contrary to the recommendation of the Security Service, the latter should be informed, and should be able to bring the department's decision to the attention of the Security Secretariat. In addition, the Security Secretariat should itself review departmental security decisions in order to ensure consistency."

(2) Discussion

The implementation or otherwise of this recommendation will depend upon the decision at F.(c)(ii)above, and also on the terms of reference of the Security Secretariat proposed in paragraph 358 of the Report.

(3) Decisions Required

(See Discussion above)

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(f) and (g) - NOTE

These two recommendations set out the categories of persons who should not be permitted to enter positions in the Public Service where they may have access to classified information. The criteria are in fact those presently embodied in Cabinet Directive No. 35, which the Royal Commission accepted without change. Their recommendation, therefore, requires no decision unless it is considered that the criteria presently in use require modification.

(h) (1) Recommendation

"Homosexuality should not always be a bar to employment in the Public Service, but should normally preclude clearance to the higher level of classification and certainly preclude postings to sensitive positions overseas;"

(2) Discussion

The Commissioners' proposal would appear to be somewhat more restrictive than the present policy, which is that persons who are unreliable because of illicit sexual behaviour "may not be permitted to have access to classified information, unless after careful consideration of the circumstances, including the value of their services, it is judged that the risk involved appears to be justified (C.D. 35, paras. 5 & 6)". It should be noted that, when the Commissioners made their recommendation, the Criminal Code had not yet been amended to permit homosexual acts in private between consenting adults.

(3) Decision Required

Whether or not current policy concerning homosexuality in the context of security clearance should be modified as proposed by the Commissioners.

(i) (1) Recommendation

"Security policy concerning separatism should be made clear; 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; information concerning membership in or association with extreme separatist groups should be reported on the same basis as information concerning other allegedly subversive movements, and the departmental decision process should be similar;"

(2) Discussion

Although "separatism" as such is not dealt with in Cabinet Directive No. 35, sub-paragraph 3(e) of the Directive denies access to classified information to "a person who by his words or actions shows himself to support any organization which publicly or privately advocates or practices the use of force to alter the form of government". Since 1964, because of the sensitivity

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of the subject, the practice followed in dealing with cases involving separatism has been for the R.C.M. Police to forward investigative reports to the Secretariat of the Security Panel in the first instance. The Secretariat has then consulted with the department concerned as to appropriate action to be taken in each case, the basic criterion being whether or not the "separatist" convictions of the person concerned were such that he or she would probably use federal employment to endanger national unity, either through the misuse of privileged information or through covert influence on the formulation of federal policies or the implementation of programmes. The possibility of such abuse of federal employment had always to be balanced against the more positive possibility of such employment in itself persuading the person concerned that the best future for Quebec lay within the federation, and could be enhanced by his efforts as a loyal federal employee. In several cases, frank discussion of these issues with the prospective employee prior to appointment has shown encouraging results.

(3) Decision Required

The question now arises whether the government should, as the Royal Commission recommends, "make clear" its policy regarding separatism, beyond the general stipulation quoted above which is embodied in the present Cabinet Directive on Security.

(j) (1) Recommendation

"Universities should not be immune from the same kind of inquiries as any other institutions or previous employers. However, these inquiries in particular should be conducted by mature, experienced and sophisticated investigators who should take great care not to conduct random inquiries concerning student activities, or to interfere with freedom of thought and discussion."

(2) Discussion

As the universities are presently the centres of significant unrest and much of the "New Left" activity, there are clearly good arguments for reviewing the policy established in 1962 of excluding the universities from security and intelligence investigations other than those directly related to federal employment. The Security Service argues with some force that, unless it is enabled to carry on investigations of possibly subversive activities on university campuses, it will be unable to keep the government fully informed as to the nature and significance of such activities.

On the other hand, there is little doubt that an obvious increase in such investigations, particularly if they cannot be related to sensitive federal employment, would in itself be provocative of fearful and suspicious reaction among students and faculties, and would in present circumstances be regarded by the "New Left" as "more repression by the establishment", and by the Canadian Association of University Teachers as a breach of faith. It may be desirable that, prior to making any change in existing policy, consultations should be held with the

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universities themselves, possibly through the C.A.U.T. and the Association of Universities and Colleges in Canada, in order to explain why the government considers the reinstitution of such investigations to be in the public interest.

(3) Decision Required

Whether the recommendation of the Royal Commission concerning security investigations at universities should be implemented, and if so, how it might be implemented most effectively.

(k) (1) Recommendation

"Definite rules should be established concerning the clearance of aliens or former aliens. In general, clearance should only be granted to such individuals when it is possible to obtain adequate data on which to base a judgment."

(2) Discussion

Although there is no specific policy set out in the Cabinet Directive on Security in relation to the security clearance of aliens or former aliens, the practice has been based on a guidance paper approved by the Security Panel in 1953, which was reviewed and reconfirmed in 1962 (copy attached at Annex "C"). While the guidelines set out therein in relation to aliens appear to be adequate, it may now be necessary to draw a clearer distinction between aliens and former aliens (that is, naturalized Canadians), bearing in mind the current policy of non-discrimination as between natural-born and naturalized Canadians. A difficulty arises here, in that while the granting of citizenship is possible after five years' residence in Canada, security clearance to the level of Top Secret normally requires a background investigation over the past ten years. If the naturalized citizen has come from a country from which we are unable to obtain background information on the person covering the five years prior to his arrival in Canada, clearance must either be denied, or granted in contravention of existing policy.

(3) Decision Required

Whether existing procedures for the security clearance of aliens or former aliens are in need of revision, and if so what revisions are required.

(l) (1) Recommendation

"Fingerprints should be taken from all persons requiring clearance, including industrial workers."

(2) Discussion

Although present policy requires the fingerprinting of all Public Service employees being granted security clearance, it has not hitherto been considered appropriate to require that employees of private companies engaged on classified contracts be fingerprinted. It should be noted, however, that some firms holding classified contracts do have employees involved fingerprinted, and it does not appear that any objection has been raised, by the employees themselves or by their trade unions.

(3) Decision Required

Whether fingerprinting should now be made a mandatory requirement for security clearance in all cases, including industrial workers engaged on classified contracts.

(m) (1) Recommendation

"Full criminal records should remain available for purposes of security clearance, whatever the decision about "vacating" such records in other contexts."

(2) Discussion

Bill C-5, "The Criminal Records" bill, which has been passed by the House of Commons and is presently before the Senate, makes provision for the disclosure of criminal records by the Solicitor General when such disclosure "is desirable in the interests of the administration of justice or for any purpose related to the safety or security of Canada or any state allied or associated with Canada". This provision was included specifically for the purpose envisioned by the Royal Commission.

(3) Decision Required

None.