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REPORT

of the

ROYAL COMMISSION

ON SECURITY

September 1968

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ROYAL COMMISSION ON SECURITY

REPORT

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ROYAL COMMISSION ON SECURITY

Canada

COMMISSION ROYALE SUR LA SECURITÉ

Ottawa, September 23rd, 1968.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

We, the Commissioners appointed as a Royal Commission in accordance with the terms of Order in Council P.C. 1966-2148 of 16th November 1966 to inquire into and report upon the operation of Canadian security methods and procedures,

BEG TO SUBMIT TO YOUR EXCELLENCY THE ACCOMPANYING REPORT.

Chairman

Member

Member

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Privacy

IV. SECURITY AND THE INDIVIDUAL

General Considerations

89. The problem posed by the impact of security procedures on individual members of society is of course one of the central issues of our inquiry. In the general area of individual freedoms, concern has been expressed in recent years over invasions by the state, as well as by private individuals and organizations, of what has come to be called the "right of privacy". The range of apparent problems is broad, and includes such matters as the use of telephone interception, electronic intrusion devices, long range cameras and other sophisticated equipment by police and governmental agencies in the course of detection and investigation of criminal offences and security matters; the collection and recording of information about individuals and organizations for the purpose of security "screening"; the use of such devices as the polygraph and the breathalyzer by the police; the use of closed circuit television and eavesdropping devices to supervise employees or to assist with the entrapment of consumers; the use of psychological tests and questionnaires by prospective employers, and in schools without parental knowledge or consent; the

accumulation and storage of personal data in computers by the state.

90. Two aspects of this general area of concern seem to us to fall within our terms of reference. The first of these is the use of certain investigative techniques for the purposes of counter-espionage or counter-subversion operations and for the acquisition of intelligence; this we consider in some detail in Chapter X. The second is the investigation of personnel for security screening and clearance purposes; this we deal with below.

91. We must first state that we consider personnel security and personnel screening of central importance to an effective security system. Some dependence may be placed upon physical security measures and upon the enforcement of regulations, but ultimately the reliability and discretion of individuals is the base upon which all true security must rest. This is especially true now that advances in technology—the advent of rapid copying equipment and sophisticated electronic devices, for example—have made it almost impossible to devise effective physical protection against a determined individual with modern equipment. We think that all persons, without exception, should be subjected to the security screening process before being allowed access to classified material. Those to be screened should include, as required, employees of Canadian Government departments or agencies, members of the armed forces and the RCMP, ministerial appointees, members and staffs of task forces, consultants, university faculty members working on classified research contracts or handling classified material, persons employed in industry concerned with classified contracts, and so on. The necessary procedures consist essentially of two parts: first, the acquisition of data about the past history of an individual; and secondly, an attempt to forecast the individual's future performance or reliability on the basis of this data.

92. We have little sympathy with the more extreme suggestions that inquiries about persons should not be undertaken because of the individual's "right of privacy", nor with the view that the process of personal investigation by the state is alien to normal and democratic practice, nor with the general premises that any individual has a right to employment within the public service or a right of access to classified information. We think that all employers—even governments—have a right to be selective in hiring employees as long as selections are made upon a sound and equitable basis. What is more, investigation of applicants for employment is a normal practice, as is investigation for credit or insurance purposes. References are required or referees are consulted. Many firms make credit bureaux checks of prospective employees, and we understand that some have relationships with local police departments which enable them to acquire at least negative data. Many firms "bond" employees, and this involves investigation. Some make use of psychological tests and interviews in an attempt to assess aptitude. The general process of data acquisition as a basis for forecasting the future performance or reliability of a prospective employee is widespread, well-understood and generally accepted. The state's procedures only differ in comprehensiveness and formality from those generally employed in one form or another by responsible employers in the private sector.

93. Neither does an individual have a right to confidence; on the contrary, access to classified information is a privilege which the state has a right and a duty to restrict. We believe that the real rights of individuals are of a rather different order. We feel, for example, that persons should be told that they are to be subjected to inquiries for security clearance, and have a right to expect that any inquiries made about them should be made by competent and trained investigators, and that any decisions made about them should be made

carefully, in a consistent and equitable framework, and on the basis of procedures that are not incompatible with the concepts of natural justice and with national style and tradition.

94. On the other hand, in order not to imperil sources of information adverse decisions must sometimes be taken about individuals without revealing to the person concerned full details of the reasons or the supporting evidence. It is sometimes necessary to refuse to employ an individual, or to transfer him or even to discharge him, because after the fullest investigation doubts about his reliability remain even though nothing may have been proved by legally acceptable standards. Such doubts must be resolved in favour of the state rather than in favour of the individual, or at least some greater weight must be attached to the interests of the state than would be appropriate in legal proceedings. People employed in sensitive environments may in certain circumstances be subject to unusual regulations concerned perhaps with search of their persons or restrictions on travel.

95. In our view, there are no simple or legalistic solutions to problems of these kinds, but only ad hoc checks and balances. Experience in the United States (where almost complete reliance is placed upon due legal process and the full force of the law can be invoked to rule upon almost any administrative decision) would suggest that there are no sensible or practical organizational or other arrangements which can provide absolute protection to all individuals against apparent occasional restriction of their rights.

96. Further, just as normal legal processes occasionally lead to injustices, so will security procedures. Usually persons do not suffer in legal proceedings because of arbitrary judgment; if they suffer, they do so only

because of the nature of the system and the content of the law itself. Similarly in security procedures extreme care must be taken to ensure that if the interests of an individual are prejudiced they are prejudiced only because of an overriding requirement and not because of lack of care. Whatever arrangements may be made in an attempt to protect the rights of the individual, ultimately his most important right—to fair, equitable and careful treatment—will depend upon the existence of policies and procedures scrupulously formulated in accordance with national style and traditions, and consistently executed and enforced by competent and trained personnel of great integrity.

97. Before proceeding to a detailed examination of screening procedures, we should note that the remainder of this chapter is largely concerned with civilian government employees. In many instances, however, the comments and suggestions we make are also applicable to members of the armed forces and to persons employed in classified work in industry; we do however devote later chapters to special problems in these areas. Somewhat similar procedures are applied to most applicants for immigration or citizenship, and many of the general remarks in this chapter apply here also, although again we devote a later chapter to a detailed consideration of these matters.

Acquisition of Data

98. There are five methods by which data that is relevant to an individual's reliability can be acquired: checking of available records; written inquiries; personal inquiries; physiological or psychological tests; and personal interviews.

99. Records Checks. ~~Checking of available records is a minimal investigative procedure which may be conducted with or without the knowledge of the~~

subject. Many countries check the records of all applicants for government employment and most countries conduct records checks of all persons who may have access to classified information. In Canada, available government records include RCMP subversive files, RCMP criminal records, departmental or armed forces files (where previous service is claimed) and immigration and citizenship files (where appropriate). In addition, the Canadian authorities have access to information from commonwealth and foreign countries with whom liaison is maintained, and (on a normal commercial basis) to credit bureaux files.

100. Written Inquiries. Written inquiries seek information about an individual's reliability, character, associations, experience and education from former employers and supervisors, from schools and universities, and from referees.

101. Personal Inquiries. Personal inquiries (so-called "field investigations") fall into two parts. First, an effort is made by means of personal interviews with former employers, associates, school or college teachers or supervisors, neighbours or appropriate local agencies to check and confirm the details of his past life that an individual has listed on a comprehensive personal history form. Secondly, use is made of these interviews to elicit information concerning character, habits, morals, reputation or associations, as well as "leads" for further interviews. If adverse information is elicited, further investigation is concentrated on this particular area in an effort to confirm, deny or expand it. Clearly this is a highly subjective and in some ways objectionable process, but in spite of considerable effort no substitute for it has yet been devised. It seems to us however of special importance that the inquiries should be made and any resulting reports prepared by mature,

experienced, sophisticated and trained officers, working under strict supervision, and that only significant information should be recorded. We were impressed in Britain, Australia and especially the United States by the care with which personnel investigators are selected, trained and supervised and their reports considered, checked, balanced and revised. We cannot emphasize too strongly that, if an individual's rights are to be protected, and cooperation obtained from such important sources of information as universities, personnel investigations of this kind must be regarded as duties requiring persons of high calibre and considerable skill and experience.

102. Tests. It would be an ideal situation if it were possible to process an individual through a series of more or less mechanistic tests, and arrive at an objective judgment of the subject's future loyalty, reliability and character. Unfortunately, we are informed that this is not possible, nor likely to be possible in the foreseeable future. Polygraph examinations are given by certain agencies in the United States, and with skilled operation it seems that this equipment can assist with equitable judgment by bringing to light so-called "areas of concern" and resolving doubts; certainly the usefulness of polygraph tests in special circumstances on a voluntary basis should receive further examination. In addition, we are informed that there is at least a possibility that tendencies towards homosexuality can be determined by physiological tests, and a research project on this subject is being conducted in Canada; we feel that support for this project should continue, both for its own sake and as a Canadian contribution to the development and improvement of the investigative process.

103. Personal Interview. Opinion is divided on the relevance and propriety of personal contact between an investigator and an individual under investigation.

In Britain, for example, records checks are regarded as a covert process, but field investigation ("positive vetting") is considered as a cooperative process in which interviews are used to discuss and resolve points which may arise in the course of investigation. Some United States agencies regard interviews with security officers as mandatory, but others (including the Civil Service Commission and the Federal Bureau of Investigation) regard them as quite inappropriate. Our own view is that each case must be considered on its merits. If areas of concern appear in the course of investigation, there seems no reason why attempts should not be made to resolve them by interview, unless they appear to be of such significance as to make it apparent that clearance is almost certainly impossible or the situation is such that a confrontation appears unlikely to be rewarding.

104. Clearly, many combinations of these five techniques are possible, and in fact actual procedures vary quite widely. In Canada, present arrangements appear to be somewhat inconsistent. In the first place, it is clear that many persons are recruited for classified employment before checks are completed, and may even be given access to classified material before the results of any checks are available. This procedure is said to be due to the exigencies of recruiting, but is nevertheless inexcusable. Secondly, records checks are conducted with some informality and inconsistency. Fingerprints are not required from all applicants for classified employment, nor from any industrial workers on classified contracts, and in the absence of fingerprints fully adequate criminal records checks are impossible. Inquiries of referees are very limited, even in the context of personnel selection. It is unusual for previous employers to be consulted in the absence of a field investigation. Further the requirement for a field investigation differs in different parts of

the government. Some departments require such an investigation for a so-called "Secret" clearance, and some require it only for "Top Secret" clearance. Subjects are interviewed by the security officers in some departments and not in others. Finally, there is a considerable inconsistency in procedures; this results in the situation that a department which does not state a requirement for a field investigation for a "Secret" clearance may be presented with adverse information from the records, which there has been no attempt to resolve by even the most limited inquiries.

105. There is a further area in which Canadian procedures seem to us somewhat inflexible, and this is in the relationship between security investigation and screening procedures on the one hand, and the personnel selection process on the other. The official policy on this subject, as stated in Cabinet Directive No. 35, is that as follows:

> "A person to be appointed to a permanent position in the public service will not normally be made the subject of security screening for this reason alone. But whenever a person to be appointed to such a position is, in the opinion of the deputy minister or head of agency concerned, likely to be required eventually to have access to classified information, that person shall before being given a permanent appointment, be made the subject of a fingerprint and file check if this has not already been done." at least a rudimentary security check

In fact, as far as we can determine, only the most limited investigation of prospective members of the public service is conducted by the Public Service Commission in the absence of a requirement for security screening. Sometimes qualifications are confirmed; occasionally referees are consulted. Personnel selection decisions are made largely on the basis of a personal interview. What is more, and in spite of the State policy Directive, it appears unusual for any security screening to take place in anticipation of a possible future requirement for

access to classified information, except in the armed forces and a few other departments and agencies.

106. In the United States Government a very different practice is followed. Investigations are conducted by the Civil Service Commission as part of the normal procedures for obtaining sufficient data to assess the suitability of candidates. The Bureau of Personnel Investigations of the Commission is responsible for the whole process of obtaining or confirming all the facts, both favourable and unfavourable, that bear on an individual's suitability for employment. It carries out this responsibility by means of records checks or field inquiries, and it evaluates the significance of the information it develops in consultation with employing departments. All applicants for the United States public service, whether or not they are to be employed in sensitive positions, are subjected at least to records checks. The object of this programme is to give effect to the government's responsibility for maintaining the quality of the public service at a high level and for implementing a meaningful merit system in which all factors bearing on suitability are considered. There are only two limitations on these procedures. First, certain departments and agencies are responsible for their own security screening processes either unilaterally or by arrangement with the Federal Bureau of Investigation. Secondly, alleged subversive associations and activities are followed up by the Federal Bureau of Investigation and not by the Civil Service Commission investigators.

107. The situation in Britain is not entirely dissimilar, although public servants are normally subjected to checks only when a security clearance is required. So-called "Normal Vetting" in Britain is a covert operation conducted by the Security Service on the basis of records, as a result of which

recommendations are made to departments about individual cases. "Positive Vetting", which is mainly concerned with character, is conducted by special teams unrelated to the Security Service (in fact, as a matter of convenience, administered by the Ministry of Technology). The employing department makes a judgment on the basis of character information supplied by these teams and any information and recommendations related to subversive activities and associations provided by the Security Service. The rationale is that the department (at least theoretically) knows the individual and can evaluate the character information, while the Security Service knows the security situation and can evaluate the significance of allegedly subversive associations or activities. Again, if the character inquiries produce information relating to subversive activities, this is passed to the Security Service for further inquiry.

108. For our part, we can see many advantages in the institution of a formalized effort to acquire, in the context of personnel selection, elementary data about every applicant for employment in the public service, whether or not he or she is to be employed on classified duties. Adverse reports would of course not necessarily be reasons for rejection, but the process of inquiry should help to avoid the unfairness inherent in a situation in which a candidate is able to conceal relevant but adverse information merely because the government makes little effort to check details of background and record. In addition, even if an individual were being initially considered for a non-sensitive appointment, some data would be available to indicate whether or not problems relating to clearance were likely to arise at a later stage when access to classified material might be vital for promotion or transfer. In the absence of such procedures, increasing mobility within the public service

seems likely to lead to growing numbers of problem cases. Further, inquiries concerning individuals may become somewhat more acceptable if conducted in the context of personnel selection rather than security investigation. ~~Finally, a general requirement for basic records checks will ensure that the names and fingerprints of all public servants are readily available to the Security Service.~~

109. We have examined the present procedures for investigation + clearance outlined in Cabinet Directive No. 35, and have reached the conclusion that they could with advantage be amended on the following lines. These suggestions extend records checks to all members of the public service, and add certain elements of formality to the procedures for granting access to classified material.

(a) Persons to be employed in the public service. Before a person is employed in the public service 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 at least be made available to the employing department, which can request further inquiries if these appear to be necessary.

(b) Persons to have access to Secret (and Confidential) information. 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 judgment 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—a point to which we shall return) to the department for decision.

(c) Persons to have access to Top Secret information. 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 clearances to levels higher than Top Secret.~~

(d) 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 in any sense 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.

110. We have already referred to one specific inconsistency in present regulations—that fingerprints are not required from industrial workers for whom clearance is needed. In our opinion there is no reason for any distinction between industrial workers and public servants in this respect. We regard fingerprints simply as a means of identification, comparable perhaps to photographs. We can see no validity in objections to the taking of fingerprints and the retention of fingerprints on file. In addition, we understand that plans are being made to "vacate" and seal original criminal records after relatively short periods and that these sealed records will only be available for specific reasons. We consider it of great importance that the full records should be available for security screening purposes, although we would agree that only the recent "unvacated" records should be used in the case of applicants for employment in which access to classified information is neither necessary nor likely to be necessary in the future.

Reporting of Data

111. Once data about an individual has been acquired, it must be reported to the decision-making authority, which is the employing department. The

present practice is for the RCMP to summarize the results of its record checks and investigations in the form of somewhat stereotyped letters or "briefs" with little or no explanation of the significance to be attached to any given item of information, and very often with data summarized to such an extent as to be difficult to assess. ~~The ostensible reason for this process of "briefing" is~~ that the RCMP is unwilling to reveal the full details of information at its disposal, and in particular the sources of items of information, to departmental officers. There is in fact some justification for this unwillingness on the part of the RCMP, for there have been occasions in the past when information so revealed has been most unwisely used by departments. In addition, the process of précis and briefing represents a form of quality control, whereby the results of the inquiries and reports of relatively junior officers can be brought to a ~~uniform standard.~~

this process of summarization

112. Whatever the reasons for this process, we feel that it is wrong in principle ~~though probably convenient in practice.~~ There will clearly be occasions (although we suggest these are likely to be few in the area of personnel screening) when protection of sources must be considered of paramount importance, but the general principle should be that decisions are made on the basis of all relevant information, although the means by which and the conditions under which the information is made available to the departmental decision-makers may vary. ~~Departmental officers must be trained to give the information~~ which comes to them the same protection as ~~would the~~ Security Service itself. On some occasions, it may be necessary to have discussions with departmental decision-makers on the contents of the files, even though the files themselves do not leave the custody of the Security Service. This procedure is already ~~followed in interdepartmental committees concerned with the screening of~~

prospective immigrants and applicants for citizenship. In general one of the most important functions of the protective security branch of the Security Service should be to ensure that all relevant information is made available to departments in as complete a form as possible.

113. In addition, one respect at least present Canadian personnel security procedures are almost unique. The government RCMP takes the firm view that the RCMP must do no more than provide basic information to departments concerning the clearance of individuals, and that it must play no formal part in the decision process itself. In a sense, the concept of departmental responsibility has been extended to support the position that the RCMP should not be asked to advise formally on the significance of the information it provides. The ostensible rationale for this attitude is somewhat mystical; it is alleged that provision of this advice would tend to edge the nation closer to a "police state". We feel the real rationale is much more practical: the ability to dissociate activities concerned with personnel investigation from the results of personnel judgment has obvious advantages as a public posture.

114. In Britain, the Security Service comments on information (or the absence of information) concerning subversive activities and associations with one of the following series of remarks:

[redacted]

s.15(1)

s.15(1)

[redacted]

115. In Australia, the Director General of the Australian Security Intelligence Organization may state that there is no security objection to a given individual having access to material classified up to but not above Secret; or having regular access to Secret material and occasional access to Top Secret material; or having regular access to Top Secret material. If, however, the Director General considers the individual to be a security risk, and the individual is already a public servant, the Director General informs the Public Service Board, the Permanent Head of the department concerned, and, if necessary the Minister, that he cannot give a security clearance, placing before them as much of the information at his disposal as the circumstances permit—frequently all the information—though not normally the sources from which it has been learned. The department and the Board are then in a position

to make an independent judgment of the reasons for withholding clearance, and to take such action concerning the individual—transfer or dismissal, for example—as may be appropriate. If the individual concerned is an applicant for employment in the public service, the Director General informs the Public Service Board that he cannot grant a security clearance, again giving such of the facts as circumstances permit, and the applicant in most cases is not appointed.

116. As far as Canada is concerned we think present arrangements are wrong on two counts. First, an organization which provides data should bear some responsibility for the implications and significance of that data; such a responsibility adds to the compulsion to be accurate and objective. Secondly, the present procedure deprives the decision-maker of the sole source of professional advice on the significance of subversive associations and the main source of professional experience on the meaning and relevance of character defects and other factors. It seems to us that this deprivation is as likely to be detrimental to the individual as it is to be disadvantageous to the state. We agree that the final responsibility for decision-making must rest with the departmental authorities; we nevertheless believe that the Security Service has a duty to provide meaningful advice to help with the decision, and that it should do this not only by providing as full information as possible but also by commenting on the importance and significance of the information it provides and by making formal recommendations concerning clearance.

The Decision Process

117. Whatever arrangements are made to provide data and advice, at some point a decision to grant or withhold clearance must be made on each individual case. This decision involves estimating the possible future behaviour of an

individual on the basis of his past history. The process is difficult enough in the case of an applicant for employment, when the sole administrative effect of an adverse decision will be the refusal of employment, or the selection of another individual from an eligible list. It is even more difficult if it relates to a person already employed, when an adverse judgment may lead to transfer, non-promotion, inhibition of career, suspension or even dismissal, and, what is more, may involve the department in a lengthy train of administrative negotiations and difficulties concerned with hearings and reviews.

118. A great deal of conceptual consideration has been devoted to definitions of loyalty and reliability, to the relationship of loyalty to security and to the relevance of certain so-called character defects to either loyalty or reliability. In practice, we feel that the initial basis for decision must be a set of criteria against which the history of the individual is measured. It is a truism that no set of criteria can meet all cases, and that a large element of subjective judgment must eventually be applied in very many cases, but nevertheless the relevance and adequacy of the criteria seem to us to be of the first importance.

119. We have been generally impressed by the criteria which are set out in Cabinet Directive No. 35, and which are applicable at present. We quote the relevant passages below:

> "1. ...The security of classified information in the possession of a department or agency may be placed in jeopardy either by persons who may be disloyal to Canada and her system of government or by persons who are unreliable because of defects in their character.
>
> "2. Employees in the public service of Canada, including members of the Armed Services and the Royal Canadian Mounted Police, who are required to have access to

classified information in the performance of their duties, must be persons in whose reliability and loyalty to his (sic) country the Government of Canada can repose full confidence. It has been clearly demonstrated that such confidence cannot be placed in persons whose loyalty to Canada and our system of government is diluted by loyalty to any Communist, Fascist, or other legal or illegal political organization whose purposes are inimical to the processes of parliamentary democracy. It is therefore an essential of Canadian security policy that persons described in paragraph 3 below must not, when known, be permitted to enter the public service, and must not if discovered within the public service be permitted to have access to classified information. If such a person is in a position where he has access to classified information, he must at least be transferred to a less sensitive position in the public service. It may also be necessary, where it appears to the Minister concerned to be in the public interest, to dismiss him from the public service....

"3. The persons referred to in paragraph 2 above are:

(a) a person who is a member of a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purpose;

(b) a person who by his words or his actions shows himself to support a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purpose;

(c) a person who, having reasonable grounds to understand its true nature and purpose, is a member of or supports by his words or his actions an organization which has as its real objective the furtherance of communist or fascist aims and policies (commonly known as a front group);

(d) a person who is a secret agent of or an informer for a foreign power, or who deliberately assists any such agent or informer;

(e) a person who by his words or his actions shows himself to support any organization which publicly or privately advocates or practices the use of force to alter the form of government.

"4. It must be borne in mind that there may be reason to doubt the loyalty of a person who at some previous time was a person as described in paragraph 3 above, even though this

doubt may not be confirmed by recent information about him.

"5. In addition to loyalty, reliability is essential in any person who is to be given access to classified information. A person may be unreliable for a number of reasons that do not relate to loyalty. To provide as much assurance of reliability as possible persons described in paragraph 6 below 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.

"6. The persons referred to in paragraph 5 above are:

(a) a person who is unreliable, not because he is disloyal, but because of features of his character which may lead to indiscretion or dishonesty, or make him vulnerable to blackmail or coercion. Such features may be greed, debt, illicit sexual behaviour, drunkenness, drug addiction, mental imbalance or such other aspect of character as might seriously affect his reliability;

(b) a person who, through family or other close continuing relationship with persons who are persons as described in paragraphs 3(a) to (e) above, is likely to be induced, either knowingly or unknowingly, to act in a manner prejudicial to the safety and interest of Canada. It is not the kind of relationship, whether by blood, marriage or friendship, which is of primary concern. It is the degree of and circumstances surrounding such relationship, and most particularly the degree of influence that might be exerted, which should dictate a judgement as to reliability, a judgement which must be taken with the utmost care; and

(c) a person who, though in no sense disloyal or unreliable, is bound by close ties of blood or affection to persons living within the borders of such foreign nations as may cause him to be subjected to intolerable pressures.

"7. In addition it must be recognized that there may be a serious risk to security in employing or permitting to be employed persons such as those described in paragraphs 3 or 6 above:

(a) in certain positions in industrial firms and related establishments involved in or engaged

upon the production or study of classified defence equipment which requires security protection; or

(b) in positions in government organizations engaged in work of a nature vital to the national security which, although they do not normally involve access to classified information, may afford their incumbents opportunities to gain unauthorized access to such information."

120. This document appears to us to be a clear and explicit statement of the criteria which should be used to guide decisions concerning personnel clearance, although we wonder whether the distinction between loyalty and reliability is not somewhat overemphasized. The decision is ultimately based on a forecast of the future reliability of an individual, in the light of various factors—including loyalty—which may affect this reliability. In any case, a judgment concerning an individual's reliability may seem less invidious than a judgment of loyalty. We also regard as somewhat impractical the requirement (paragraph 2 of the quotation) that certain persons "must not, when known, be permitted to enter the public service", when at present no attempt is made to seek data on those who enter non-sensitive positions. Under our suggested procedures, the fact that records checks would be made of all candidates would presumably bring to light more such cases. In order to avoid excessive restriction, the Directive should probably be amended to state that the firm prohibition on entry to the public service should apply only to those who may have access to classified information, or are likely to have opportunities to gain access. Cases where candidates will have no such opportunity should be treated on their merits, as we suggest in paragraph 109(a).

121. There are four ~~further~~ points we would raise concerning these criteria. The first concerns homosexuality, the second Quebec separatism, the

third the relevance of student activities at college or university, and the fourth the security clearance of aliens or former aliens.

122. The question of homosexuality is a contentious area, especially as social mores change. It is a fact, demonstrated by a large number of case histories, that homosexuals are special targets for attention from foreign intelligence services. What is more, there seems to us clear evidence that certain types of homosexuals are more readily compromised than non-deviate persons. However, we feel that each case must be judged in the light of all its circumstances, including such factors as the stability of the relationships, the recency of the incidents, the public or private character of the acts, the incidence of arrests or convictions, and the effect of any rehabilitative efforts. In general, we do not think that past homosexual acts or even current stable homosexual relationships should always be a bar to employment with the public service or even to low levels of clearance. We do feel however that, in the interests of the individuals themselves as well as in the interests of the state, homosexuals should not normally be granted clearance to higher levels, should not be recruited if there is a possibility that they may require such clearance in the course of their careers and should certainly not be posted to sensitive positions overseas.

123. The problem of separatists is equally contentious. ~~At present, in~~ view of the sensitivity of this subject, special arrangements exist whereby information concerning the membership in or association of individuals with certain separatist organizations and groups is made available by the RCMP, not to departments, but to the Privy Council Office. The Secretaries of the Security Panel and Sub-Panel then take such steps as appear appropriate to arrange that ~~such persons are not employed in sensitive positions.~~

~~124.~~ and We suggest that security policy concerning separatism should be made clear. We can see no objection to the federal government taking (and being 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. We feel that 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 that the departmental decision process should be similar. We are of course aware that there is a wide spectrum of activity relating to separatism, ranging from overt political activity to clandestine terrorist planning and action, and we do not for a moment suggest that all persons who have been associated with overt and non-violent groups should be excluded from federal employment. We see no reason however why the federal government should employ (especially in sensitive areas) persons who appear to be actively committed to an extreme separatist position. At the very least we feel that a decision to employ such persons should be taken only on the basis of a knowledge of their records.

125. A third issue concerns the importance which should be attached by the Security Service or the decision-makers to the activities of young persons at universities. The point is made that universities are traditional homes of free thought and protest, and that the positions taken by young and inquiring minds should not be held "against" them in later years. We agree with this point of view. Questionable university associations or activities should not necessarily bar an individual from government or sensitive employment, although such activities may well be relevant in any later investigation.

126. We are however somewhat disturbed by the tendency in certain university circles to use the plea of academic freedom to substantiate claims to inviolability and to privileged immunity from normal security procedures. In the first place, we can see no objection to inquiries at universities concerning persons who are seeking government employment or security clearance. In fact, we regard such inquiries as of special importance because the products of universities are more likely than other persons to reach sensitive and influential positions. In any case, university authorities can be said to have the same status as "previous employers" and should accept inquiries about students on this basis. ~~More generally, however, it is clear that as a result of government instructions originating in 1961 the security authorities do not operate as effectively in universities as they do in other areas.~~ We see no reason why any immunity should be accorded to members of faculties or student bodies who engage in subversive activities. We do believe however that all inquiries at universities should be conducted by mature, experienced and sophisticated investigators and be the subject of sensible and balanced reporting. The Security Service should take special care not to interfere with freedom of thought and discussion, to avoid random inquiries concerning student activities, and to avoid overemphasizing the importance of such activities.

127. Fourthly, we note that the clearance of aliens or former aliens presents problems, which have become of significance now that aliens are entering the public service in growing numbers. We feel that definite rules must be established to deal with this question, and we think that a decision to grant a security clearance to an alien or former alien should be taken on the basis of positive information comparable in quality and adequacy to that which would be obtained in Canada. Unfortunately, there will be many cases in which it will

be impossible to obtain adequate data concerning an individual from his country who has recently arrived from abroad of origin, and we think that, in such cases, no clearance should be considered until the individual has been resident in Canada for a meaningful period and has undergone a full field investigation. Former citizens or residents of communist countries are a special category; in these cases clearances should only be granted where the obvious advantages of doing so outweigh the special risks involved.

128. Finally, we feel that positive arrangements must be made to ensure as far as possible that departmental judgments are consistent and balanced. Two procedures—one general and one specific—should be adopted to this end. In the first place, all adverse decisions and a sampling of non-adverse decisions should be reviewed by the Security Secretariat in consultation with the Security Service. Continuing inconsistencies or anomalies in departmental judgments and action should soon become apparent, and the Security Secretariat can use the channels open to it to rectify the situation. Secondly, we suggest that when a department decides to grant access to classified information in spite of the Security Service's advice or recommendation, the Security Service must be informed of the disposition of the case, so that it can take such action as it considers appropriate to review the department's security posture, or to bring the department's decision to the attention of the Security Secretariat. It seems to us that procedures of this kind will combine the requirement for departmental responsibility for judgment with an assurance that a department's judgment will be responsible.

Review Procedures

129. Decisions to withhold or (especially) to withdraw clearances must

often lead to administrative decisions that may affect the careers or the livelihood of individuals. In some cases the individuals concerned find it in their own interests to resign or agree to a transfer. There remains however a residue of cases in which the demands of natural justice may well require that decisions affecting individuals should be subject to some form of appeal or review at the instance of the individual concerned. A great deal of attention has been devoted in many countries to the problem of devising a form of review which will meet the proper requirements of national security, and the fact that there is no simple solution to the problem is demonstrated by the wide variety of approaches that have resulted in different countries—approaches which vary from an absence of any appeal system to an ostensible complete dependence on formal judicial proceedings.

130. Our inquiries suggest that both extreme positions are untenable. Some form of review system is clearly desirable in itself, as well as to meet reasonable public and parliamentary expectation. On the other hand, we are certain that fully judicial procedures are ill-suited to the review of decisions based on security grounds. There are a number of reasons for this. One reason has in our view been overemphasized in Canada, although it still has great importance in certain circumstances; this is the need to protect information and sources from disclosure in any form of hearing. A second reason has not been emphasized sufficiently; this is the fact that decisions in this area ultimately relate to the defence of the state, for which the government and only the government is responsible. Such decisions should not be surrendered to any group outside the executive, although there is no reason why the executive cannot seek advice in its decision-making. A third reason relates to responsibility. Ministers and deputy ministers are responsible for the security of their departments; they

cannot reasonably be required to be bound by an outside decision (other of course than that of the Prime Minister) on questions of individual access to the classified material for which they are responsible. A fourth reason is pragmatic; if all judgments in the area of security become subject to independent appeal and decision, the executive may tend to take such steps as are possible to ensure that cases which merit this form of review do not arise; in other words, the harder it becomes to deal with security cases without recourse to legal and public review, the greater will be the pressures for very rigorous—even unfairly rigorous—judgments by departments before employment, and for resort to administrative (rather than security) measures against employees who become the subject of adverse security reports.

131. There are three areas in which review may be required—employment, immigration and citizenship. Until recently the situation was that decisions concerning dismissals of public servants (but not industrial workers) on security grounds might be reviewed as a last resort by three members of the Security Panel who act in a collective advisory capacity. The situation has however been changed by recent amendments to sections 7(7) and 7(8) of the Financial Administration Act (S.C. 1966-67, c. 74) which read as follows:

> "(7) Nothing in this or any other Act shall be construed to limit or affect the right or power of the Governor in Council, in the interest of the safety or security of Canada or any state allied or associated with Canada, to suspend any person employed in the public service or, after an inquiry conducted in accordance with regulations of the Governor in Council by a person appointed by the Governor in Council at which the person concerned has been given an opportunity of being heard, to dismiss any such person.
>
> "(8) For the purposes of subsection (7), any order made by the Governor in Council is conclusive proof of the matters stated therein in relation to the suspension or dismissal of any person in the interest of the safety or security of Canada or any state allied or associated with Canada."

Later in this chapter we suggest a means whereby this requirement for a hearing may be met. Immigration decisions in which security is a factor may be appealed to the Immigration Appeal Board, which may take into account compassionate and humanitarian considerations, unless the two ministers concerned sign certificates denying discretion on other than strictly legal points to the Board; citizenship decisions involving security cases are decided by the responsible minister and no appeal procedures exist at present. These differing systems seem to us to be inconsistent, wasteful of expertise and in the long term probably marginally dangerous to the security of the state as well as to the rights of individuals. We have in fact encountered no very widespread concern about these present arrangements but we feel that a new and more formalized approach to the problem would serve to improve the public image of security measures and still what criticism does now exist about their fairness.

132. We have reviewed the arguments and discussions that have taken place over the years—particularly in 1957 and 1963—concerning the propriety of establishing some form of security review panel to which public servants would have access. ~~Most recently,~~ In 1963, when the issue was considered in great detail, and terms of reference for an independent and extra-departmental security review board were drafted, the Security Panel recommended against its establishment and suggested instead the adoption of a revised Cabinet Directive on security within the public service. This Directive (No. 35) included provisions for a system by which three members of the Security Panel would review any proposed recommendation to a minister for dismissal on security grounds.

133. The main arguments advanced against the establishment of the independent panel were: first, that the government would be subject to pressures for

the extension of the proposal to include fully judicial safeguards for the employee, and that these would inevitably compromise vital sources of security information; secondly, that the government would be subject to pressures for the extension of the plan to members of the armed forces who have their own grievance procedures and to employees of private firms, thus creating difficulties in the field of labour-management relations; thirdly, that the proposed procedure would undermine established managerial responsibilities and practices throughout the public service; and fourthly, that departments would tend to seek other methods of dealing with security cases in order to avoid mandatory review of decisions by a body outside the public service.

134. We do not find these arguments completely persuasive. Briefly, we feel that pressures for a fully judicial review system can be resisted, that extension of a sensible system to the armed forces and to private industry is not necessarily undesirable, that "established managerial responsibilities and practices" in the public service in the area of security are not so effective and satisfactory as to be entirely unworthy of interference, and that the avoidance of decisions leading to mandatory review may not always be undesirable from the point of view of national security. Further, although we are convinced that great care is exercised in the handling of individual cases, we are unimpressed by the operation of the system for final review that was adopted in 1963 ~~and is outlined in Cabinet Directive No. 35. As far as we can tell, on the only occasion on which the system was used, the "appeal" became a mere item on the agenda of a Security Panel meeting (with those who made the decision assisting with the review), rather than a special and specific re-hearing of the arguments by three uninvolved members of the Panel.~~ We do not think it impossible to devise a system which will provide for meaningful review of the decisions

of departments, preserve the requirement for governmental responsibility and decision, give adequate protection to sensitive information and sources yet provide a reasonably effective safeguard against arbitrary, hasty or ill-considered judgments, and perhaps also avoid the necessity for ad hoc inquiries into individual cases.

135. In our attempt to devise such a system we have kept in mind three principles. First, it seems to us vital that individuals (except applicants for employment and independent applicants for immigration) who are the subjects of decisions on security grounds should be given as many details as possible of the factors which have entered into the decisions. Quite clearly there will be some cases in which little information can be made available to the individual, but normally, in the general run of cases relating to membership of associations, residence of relations and character defects, it should be relatively simple to indicate the relevant factors without disclosing sensitive sources. At the very least it is certain that in areas, such as employment, immigration and citizenship, in which decisions may be made either on security or on non-security grounds, it is essential to inform the subject of the category into which his case falls, so that he is able to take the appropriate steps if he wishes his case to be reviewed.

136. Secondly, as we have already implied, we maintain that the decisions of a board concerned with the review of security matters can only be advisory. Security is a function in which the safety of the state is involved, and in such an area the government must exercise its right to govern; no independent or extra-governmental body can assume this role. In practical terms the board must review the final decisions of departments and advise the Prime Minister and the minister concerned of the results of this review.

137. Thirdly, we consider that security is an area in which expertise and understanding are important. We consider it wasteful that expertise in this area should be acquired and then only used in a few individual cases or specialized areas; all security decisions have much in common, and the same board should review contentious decisions in all appropriate areas.

138. In fact, we suggest that a new Board should be established to deal with a variety of appeals against security decisions. The general responsibility of this Board would be to review decisions made in the area of security in order to ensure that the rights of individuals had not been unnecessarily abrogated or restricted in the interests of the security of the state and its allies, and that no unnecessary distress had been caused to individuals. The Board would deal with the following types of cases:

(a) Protests by public servants (including members of the armed forces) who wish to appeal against a departmental decision to dismiss or transfer them on security grounds. In cases of dismissal, the Board would provide the form of hearing required by section 7(7) of the 1967 amendments to the Financial Administration Act. (S.C. 1966-67, c. 74)

(b) Protests by public servants against denial of promotion or against an apparent inhibition of career prospects on security grounds. Cases of this kind will normally only come to light after appeal through normal channels to a Promotion Appeal Board if this Board feels it necessary to advise the applicant of the true reason for failure to take some such administrative action as posting or transfer.

(c) Protests by industrial workers against dismissal or transfer or against denial of promotion or apparent inhibition of career prospects on security grounds.

(d) Protests by such persons as consultants or university faculty members where withdrawal of clearance affects professional careers.

(e) Protests by sponsors or nominators against refusal on security grounds to admit to Canada potential immigrants they have sponsored or nominated, and protests by sponsors or nominators against refusal to grant landed immigrant status to a person already in Canada whom they could have sponsored or nominated if he were abroad.

(f) Protests by applicants for citizenship who have been refused on security grounds.

139. It will be noted that there are three categories of persons who we think should not have access to the Review Board. Nor should these classes of persons be given any indication that the reasons for adverse decisions are based on security grounds. These categories are as follows:

(a) Failed candidates for employment as public servants. An applicant for employment knowingly places himself in a competitive situation, and presumably appreciates that any decision concerning him will be made on the basis of a complex of factors; there is absolutely no requirement for the employer—in this case, the government—to enter into

controversy with an applicant by informing him of the reasons for his failure. Similar considerations apply to failed applicants for employment in industry, and to consultants and faculty members who are denied clearance as opposed to having an existing clearance withdrawn.

(b) Independent applicants for immigration resident abroad. Although the Canadian Government is committed by common justice and humanity to give fair consideration to all cases, it would be inappropriate for it to be placed in the position of having to enter into a controversy concerning security with a citizen of another country without sponsors.

(c) Persons without sponsors or nominators who enter Canada ostensibly as visitors and then request a change of status to that of landed immigrant. We see no reason why such persons should be treated differently from independent applicants for immigration resident abroad; as such they should have no access to the Review Board.

140. In addition, it should be noted that persons who have already passed through the immigration screening process (on their own behalf or through sponsors or nominators) and have been formally admitted to Canada as landed immigrants should have no need to appeal to this Board. We think that deportation of such persons should be regarded as a most serious punitive act, and that decisions to deport, even if taken on security grounds, should be subject to formal judicial due process and appeal rather than to a review by the kind

of board we envisage. If the situation is such that the government is unwilling to disclose acceptable and satisfactory evidence, we feel that deportation should not be ordered. As long as immigration controls are reasonably rigorous and effective, such situations should not often arise.

141. The Security Review Board we envisage should consist of a chairman and (say) two other members, all nominated by the Governor in Council, and should meet as the need arises. The Board should be independent of any government department or agency although its secretarial support would be provided by the Security Secretariat. Its members should not be active government officials, although they would of course be subject to governmental security screening procedures. The Board's procedures should be on the following lines:

(a) An employee, sponsor or nominator of an immigrant, or applicant for citizenship about whom an adverse decision has been made on security grounds and who decides to apply for an inquiry is provided with a document indicating to the extent possible without compromising sensitive information or sources the reasons for the adverse decision.

(b) The Board interviews separately and privately representatives of the department concerned, representatives of the security authorities, the person concerned (who may be accompanied by any friend, lawyer or trade union official he wishes to nominate) and any other individuals whom the person wishes to be heard. The Board may interview these persons as many times as it considers necessary to gain a full understanding of the case. The Board is not bound to make its decision and render its advice solely on the basis of the evidence

brought before it, but may order such further inquiries as it considers appropriate. As all those who appear before the Board are interviewed separately, there is no direct confrontation or cross-examination, but the Board will satisfy itself as to the decision taken by asking questions arising from previous testimony.

(c) The advice of the Board on a given case, the reasons for this advice and any recommendations or comments which the Board considers appropriate are communicated by the Board to the Governor in Council and the minister concerned. A brief record of the Board's decision is also communicated to the individual concerned. When the advice of the Board has been received, any further action on the case is considered by the Prime Minister in the light of this advice.

142. The suggestion has been made that recent legislation affecting the public service, especially the Public Service Employment Act, the Public Service Staff Relations Act and Amendments to the Financial Administration Act (S.C. 1966-67, c. 71, c. 72 and c. 74) together with the grievance procedures which stem from them, may make it difficult in future to deal with individual security cases in the manner we outline above. We have considered the existing legislation, however, and believe that the government's position is secured by section 112 of the Public Service Staff Relations Act, which reads as follows:

> "(1) Nothing in this or any other Act shall be construed to require the employer to do or refrain from doing anything contrary to any instruction, direction

> or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.
>
> "(2) For the purposes of subsection (1), any order made by the Governor in Council is conclusive proof of the matters stated therein in relation to the giving or making of any instruction, direction or regulation by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada."