

MEMORANDUM TO THE SECURITY PANELSecurity Policy - Appeal System

At its 61st meeting on July 17th, 1956, the Security Panel requested that the Security Sub-Panel extend a recommendation on security policy to include a Review and Appeal Board. The original recommendation had been made following a re-assessment of the communist threat in the light of statements made by Krushchev and Mikoyan at the 20th Congress of the Communist Party of the Soviet Union early in 1956. The implications of these statements were set out in a paper prepared by the R.C.M. Police in April 1956, the conclusions of which formed the basis for the Sub-Panel's recommendation that consideration be given to denying communists employment in the public service and removing those found in the government's employ, whether or not they had access to classified information. It was the Sub-Panel's view that in the forthcoming period of "competitive co-existence", during which Soviet espionage and subversion would very probably be expanded, certain measures were not only to protect classified information vital to our own and allied governments, but to prevent communists from rising to positions of influence and responsibility within the public service. As members will recall, the view of the Panel was that such an extension of security policy would not be acceptable unless some system of control were established to ensure that individual rights were preserved.

2. In accordance with the Panel's request, the Sub-Panel has carefully considered a system of controls over the possible dismissal of communists in the public service, including both a mandatory system of review by an interdepartmental body such as a quorum of the Security Panel, and an appeal system somewhat similar to that instituted in the United Kingdom in 1948. Upon further consideration, the Sub-Panel decided not to recommend a mandatory review, for the following reasons:

- (a) a mandatory review procedure would appear to be an infringement of departmental responsibility for security control;
- (b) adequate review procedures had already been established in the Department of National Defence;
- (c) those departments and agencies who wished to do so could always refer difficult cases to the Security Panel for review, as many had done in the past; and
- (d) the proposed appeal system could operate effectively without a mandatory system of review.

3. The Sub-Panel, however, is aware of the danger that, without a central system of review, unequal standards may be applied to cases from department to department. Further, there is

....2

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the possibility that ill-considered action, or no action whatsoever, might be taken as a result of unequal standards, with the consequent possibility of injustice or embarrassment. The Sub-Panel suggests that this danger can only be avoided by a considerable improvement in the selection and training of security officers in departments and agencies in which security is not a major problem but which nevertheless from time to time receive highly classified information. A recommendation concerning this problem is set out below.

4. Regarding a possible appeal system, the Sub-Panel has described in the attached paper the kind of procedure which seems best adapted to the purpose of making available to the employee the benefit of the most careful and objective application of government employment policy in the field of security, and to make available to the head of a department or agency the benefit of considered and judicious advice in one of the more difficult of his administrative duties. In determining whether or not consideration should be given to establishing such a system of appeal in conjunction with the proposed extension of security policy, the Panel may wish to bear in mind the following advantages and disadvantages of the procedure suggested in the attached paper:

Advantages

- (a) in addition to the general advantages inherent in the purposes of the appeal system, which are mentioned in paragraph 4 above, a considerable public demand for an appeal procedure for security cases would be met, at least to some extent;
- (b) the individual employee dismissed on security grounds would be assured of an objective consideration of his case within the limits of the government's general security policy;
- (c) departments and agencies would be able to inform the employee of the reasons for his dismissal, and would no longer be forced in order to maintain security to seek out (or create) often inadequate administrative reasons for effecting a dismissal;
- (d) in accordance with the principles of natural justice, an employee would be given the opportunity to know in general terms and to answer the grounds on which an action contrary to his interests is being taken;
- (e) a valuable body of "security jurisprudence" would accumulate in the records of the Appeal Board, for the general guidance of all security organizations of the government;
- (f) the actions of the Appeal Board would exert a useful discipline upon the consideration of cases for dismissal on security grounds, thus in effect

....3

creating and maintaining consistent standards by which problems of personnel security might be judged; and

- (g) the establishment of an Appeal Board would permit the government, in good conscience, to avoid the anomaly of itself employing communists in any capacity when the great bulk of the defence budget is expended for the purpose of protecting Canada and its allies from the achievement of world communism's expressed objectives.

Disadvantages

- (a) with the dissemination of information provided by the government's investigative agencies to an Appeal Board, there is the danger that some of the vital sources of this information will be revealed in such a way that they will be rendered useless;
- (b) although in effect an individual to be dismissed is not normally accused of any illegal act, there is the possibility that the appeal system would be misinterpreted by the public as a denial of individual rights, in that the usual legal safeguards such as the availability of counsel will not be provided under the proposed system;
- (c) there may be difficulty in making the appeal procedure available to employees of agencies of the Crown which have agreements with trade unions concerning grievance procedures;
- (d) trade unions may demand that the appeal procedure be made available to employees of private firms engaged in fulfilling classified defence contracts with the government, with a number of resultant labour-management problems; and
- (e) the government may encounter some difficulty in finding persons of sufficient stature who are willing and able to serve as members of an Appeal Board.

5. The Security Sub-Panel suggests that the Security Panel consider, in the light of the proposed extension of security policy, and of the points set out above, whether Canadian interests might best be served by establishing a system of appeal such as that described in the attached paper. It is not intended that this paper be considered in any sense as final but, should the general approach be approved by the Panel, the procedures set out therein would be applied in a re-drafting of the Cabinet Directive on Security. In addition, the Panel may wish to consider calling the system a "Security Advisory Board", as its function is primarily of an advisory nature. This would

....4

remove the legal connotation of the title "Appeal Board", and to some extent meet the disadvantage set out at 4.(b) above, while the system would still retain the function of an administrative appeal.

6. The Sub-Panel also recommends that the Security Panel consider means by which the selection and training of security officers might be significantly improved in departments and agencies in which security is not a major problem, but which nevertheless from time to time receive highly classified information, in order that consistent standards might be applied to problems of personnel security within the bounds of departmental responsibility.

P.M. Dwyer,
Secretary of the Security Panel.

Privy Council Office,
Ottawa, January 23rd, 1957.