

CONFIDENTIAL

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Ottawa, July 31, 1957.

A.D.P. Heeney, Esq.,
Chairman,
Civil Service Commission,
Jackson Building,
O t t a w a.

Dear Mr. Heeney:

I hear through Mr. McNaughton that you were recently enquiring about present security policy in the Civil Service. I have spoken to Mr. Bryce and he agrees that there have been some recent very lengthy discussions about one aspect of security in which you would be interested. These relate to the central problem of security - our desire to maintain a proper balance between the protection of classified information, and a due regard for the rights of the individual.

As you will recall, under the present system security is directed primarily to the protection of our secrets, and therefore a person whose loyalty or reliability is subject to serious doubt is removed from access to our secrets. He is not necessarily dismissed from the public service and no accusations either public or private are made. In this way we have avoided attaching any stigma to persons whose loyalty or reliability are in serious doubt; we have also avoided subjecting people to the damaging scrutiny of public procedures - as, for instance, so often happens in the U.S. Nevertheless there have always been potent arguments in favour of some kind of review and appeal system being set up in Canada; and these have recently been examined at length, largely under the stimulus of this office.

I am therefore forwarding you some selected documents on this subject as it seems to us a matter in which the Civil Service Commission has a direct interest. Even these selected documents are rather lengthy, and therefore I will attempt to summarize them:

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Document I

(Memorandum from the Secretary to the Security Panel)

This is by way of a preamble to the whole problem. It consists of an examination I made of certain sections of the report of the Committee on Ministers' Powers made in 1932 in the U.K. and known as the Donoughmore Report. In these sections the report examines the nature of administrative decisions on the one hand, and quasi-judicial decisions on the other. It then distinguishes and applies to quasi-judicial decisions four principles of "natural justice". Mr. Bryce did not agree that the existence of parties to a dispute prohibits a purely administrative decision, and therefore the arguments in the note may fall to the ground. Nevertheless, I have included the memorandum because the principles of "natural justice" do seem to have some pertinence to the security problem.

Document II

(Security Sub-Panel Document SSP-80)

This document contains the first draft of a review and appeal system. It was requested by the Security Panel because the Security Sub-Panel had previously made a recommendation that the existing Cabinet Directive on security policy should in effect be strengthened to prohibit the employment of any communists discovered within the public service whether or not they had access to classified information. The Sub-Panel had made this recommendation after an examination of the Krushchev-Mikoyan speeches at the 20th Congress of the Communist Party of the Soviet Union which seemed to foreshadow a long period of competitive coexistence during which penetration of the public service by communists might increase and be relatively easier than it had been. The full Security Panel was of the opinion that the recommendation, if accepted, would have to be accompanied by a review and appeal system.

Briefly, the draft recommends that any decision by a department or agency to dismiss a person from the public service should first be reviewed by a quorum of the Security Panel. It would be the function of this review board to determine that the person whose case came before it was in fact a communist, or supported communism to such an extent that his employment presented an equal

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risk. If the review supported the department or agency opinion, an appeal procedure would then go into effect. This would consist of the person being informed, as far as it was practical to do so, of the information on which the decision to dismiss him was based. He would then be given the right, if he chose to exercise it, of appearing before an appeal board to consist of a justice of the Supreme Court, the Chairman of the Civil Service Commission and a senior labour union executive. This board would then make a recommendation to the head of the department or agency who would be free to accept or reject it. In this way the principle of departmental responsibility for security would be maintained.

Document III

(Security Panel Document SP-167)

The Security Sub-Panel debated Document II during many meetings and various modified drafts were discussed. The final result was this paper which went forward to the Security Panel. It represented a compromise resulting from fairly considerable disagreement and some of us were not satisfied with it.

It differs essentially from the original draft in that the review procedures are removed entirely. An attachment sets out a workable appeal procedure, but the cover note which argues the pros and cons concludes that on the whole the disadvantages of an appeal procedure outweigh the advantages.

Document IV

(Extract from the Minutes of the 62nd meeting
of the Security Panel)

This item summarizes the views of the Security Panel on Document III. The conclusions of the Panel are set out in paragraph 25, and you will see that the Panel considered that the matter should be reconsidered at a time when the Civil Service Act might be reviewed.

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I should be glad to discuss this whole problem with you at some time if you wish. It seems probable that, if further serious consideration is to be given to setting up an appeal system, the initiative might have to come from the Civil Service Commission should you think it necessary. I am sending a copy of this letter to Paul Pelletier with whom I have talked about it in general terms.

Yours sincerely,

ORIGINAL DESPATCHED
AND SIGNED BY

PMD:jn

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

c.c. Mr. Pelletier

*- copy stat. by PP &
retained in DSW's files.*