

SECRETCABINET COMMITTEE ON THE SECURITY APPEAL SYSTEM

The first meeting of the Cabinet Committee on the Security Appeal System was held in the Privy Council Chamber on Wednesday, December 3rd, 1958, at 8 p.m.

PRESENT

The Honourable E.D. Fulton (in the Chair)
Minister of Justice

The Honourable G.R. Pearkes
Minister of National Defence

The Honourable Raymond O'Hurley
Minister of Defence Production

The Honourable Ellen Fairclough
Minister of Citizenship and Immigration

ALSO PRESENT

Mr. N.A. Robertson
Under-Secretary of State for External Affairs

Mr. D.A. Golden
Deputy Minister of Defence Production

Mr. R.B. Bryce
Secretary to the Cabinet

Mr. D.F. Wall (Secretary)
Privy Council Office

The Minister of Justice explained to the members that the Committee had been set up on his recommendation as a result of the concern which the Prime Minister and he had felt about the lack of any procedure in the government's present security arrangements by which an employee suspected of disloyalty was able to answer the derogatory information against him. In the context of civil liberties and the ordinary right of appeal against decisions which could affect the future of persons who had dedicated their lives to the public service, it was felt that the present system in which a deputy head or his security officer was empowered to deal in an arbitrary fashion with such cases could be improved by the establishment of a board of review or appeal which would give the employee the opportunity of a hearing.

2. Mr. Fulton went on to explain that a case had arisen in the Canadian Broadcasting Corporation in 1957 in which an employee had been refused a promotion on security grounds. The matter had been complicated by the fact that the employee was a member of a union with recourse to a grievance procedure under the terms of a collective agreement. A grievance was eventually

placed before an arbitration board. As a result of the board becoming aware of the security aspects of the case and not considering itself able to deal with these aspects, the government had been requested to arrange a confidential enquiry. An enquiry was held, and the commissioner appointed to conduct it, after having reviewed all the information and having given the employee an opportunity to answer it, had found in favour of the employee. Mr. Fulton considered that this system had worked satisfactorily, and that it might form a pattern for a similar system which could be put into effect within the Public Service.

3. The Minister informed the Committee that his department had drafted an order in council setting out a system of appeal based in part on that in operation in the United Kingdom, and that he had discussed it with the interdepartmental Security Panel, whose members were the deputy heads of departments and agencies most concerned with problems of security. It became apparent at this meeting that there was such a divergence of opinion between the Minister and members of the Security Panel concerning the merits of introducing such a system that the matter could only be resolved by reference to Cabinet. The Minister considered that it would be improper for him, in the light of the views of the officials concerned, to insist that such a system be instituted without Cabinet approval, and it was for the purpose of studying the matter and reporting on it to the Cabinet that the present Committee had been formed. The views of members were then invited on the system of review set out in the draft order in council under consideration.

4. The Minister of National Defence stated that, although he had not been able to study the matter exhaustively, he had discussed it with his senior officials and had arrived at the opinion that the proposed system of appeal would serve no useful purpose. He considered that the present system was reasonably effective in that it permitted a deputy head to act on the advice of his officials in deciding that the employment of certain persons in sensitive positions would constitute a risk to the information for which he was responsible and, if necessary, to dismiss the person as he would any other unsuitable employee.

5. Mr. Pearkes considered that there would be no advantage in permitting an employee, in whom the deputy head had lost confidence, to have access to a board of appeal which could not in the nature of things give the employee the full reasons for his proposed dismissal, nor offer him the opportunity for the confrontation and cross-examination of his accusers. He also considered that such a system would cause serious problems within a department in cases where the findings of a board of appeal would in effect reverse a deputy head's decision to dismiss.

6. The Minister of Defence Production considered that the institution of such a system of appeal within the public service would lead inevitably to demands that it be extended to persons employed on classified contracts let by the government. As the great majority of these employees would be members of labour unions, hired under the terms of collective agreements, he considered that the extension of an appeal system to these persons would raise very serious problems for his department.

7. The Minister of Citizenship and Immigration stated that she failed to see how a board such as that proposed in the draft order in council could satisfactorily fulfil its function, considering the limitations imposed by the R.C.M. Police on the information that could be made available to it. She went on to state that in cases of immigrants being refused entry into Canada on the grounds of security information, her department was unable to obtain the information in any detail because of the apparent necessity to protect the sources of the information.

8. The Under-Secretary of State for External Affairs pointed out that, while he agreed that the present system appeared to be arbitrary in nature, it did in fact place a heavy duty on deputy heads and occasionally on the Chairman of the Security Panel, to whom difficult cases were usually referred, to see that justice was done. It had been his experience that, with this referral to a body of experienced officials, there had been no real injustice under the present system. He considered that an even more serious problem than the lack of an appeal system lay in the way in which derogatory information concerning employees was accumulated on the files of the R.C.M. Police. He explained that there was no procedure by which a derogatory file could be cleared, and described how items of information, often vague and nebulous, their context often misunderstood or incomplete, accumulated on the files over a long period of time. Unless the files themselves were scrutinized by objective and responsible persons, the items of information, couched in the language of suspicion, became cumulative in effect and did not present a true perspective.

9. During the discussion that followed, a number of points were made:

- (a) that the government would be confronted at the next session of Parliament with the passage of the proposed Bill of Rights, and a revision of the Civil Service Act, from which a debate on the matter of security hearings would inevitably arise. While the government might be faced with the difficulty of defending the present system, it was on the whole a workable and well-administered system, and while an alternative system including some form of appeal might look better on the face of it, it would probably not in fact be as effective;
- (b) that if the proposed system were introduced, a number of awkward questions of detail would arise and would be difficult to answer - for example, the lack of a right to be represented by counsel, the lack of cross-examination, and the inability to provide the employee with the full information against him;
- (c) that there appeared to be some merit in considering a system in which a case would be reviewed by an impartial body before a decision to dismiss was taken;
- (d) that in such a system a deputy head could inform the employee concerned that security information about him had come to light, and that

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he had two possible courses of action -
to resign his position or to have the case
considered by a board of review; and

- (e) that it was considered that for the time
being any proposed board of review or appeal
should be limited to the civil service proper
and not at present extended to Crown
corporations or other agencies.

10. After further discussion, the Committee agreed:

- (a) that the draft order in council be revised
in the light of points (c), (d) and (e) above
and be referred again to the Security Panel
for consideration; and
- (b) that the Security Panel be asked to make
further recommendations to the Committee.

D.F. Wall,
Secretary.

Privy Council Office,
Ottawa, January 6th, 1959.

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