

WORKING PAPER ON
A SECURITY REVIEW BOARD

1. Though the Interdepartmental Committee on Security and Intelligence and the Security Secretariat of the Privy Council Office combine to form an ad hoc review committee there is no formal appeal board as such. One of the recommendations of the Royal Commission on Security was that a Security Review Board should be formed to deal with appeals from certain individuals against security decisions. It was proposed that the board would "review decisions made in the area of security 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". It was proposed that the Board would deal with the following types of cases:

- a. "Protests by public servants against denial of promotion, or against an inhibition of career prospects on security grounds".
- b. "Protests of industrial workers against dismissal or transfer or against denial of promotion or apparent inhibition of career prospects on security grounds".

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- c. "Protests by such persons as consultants or university faculty members where withdrawal of clearance affects professional careers."
- d. "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".
- e. "Protests by applicants for citizenship who have been refused on security grounds".

Aim

- 2. The aim of this paper is to examine the feasibility of forming a Security Review Board, to deal with security matters in the area of government employment.

Composition of the Proposed Board

- 3. It was envisaged by the Royal Commission that the board would consist of a chairman and two members, that it should be independent of any government department, and that its members should not be active government officials. The formation of such an impartial board was tried once before

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by the government in the forming of a Court Martial Appeal Board but the attempt was abandoned in favour of the present composition of the Court Martial Appeal Court which is made up of Judges from the Federal Court. Although not disagreeing with the desirability of the Royal Commission proposal that the Security Review Board be an independent group, it is felt that to be completely realistic the board should be constituted from existing Canadian legal bodies. There presently exists in the Canadian judiciary system three such appeal courts, members of which could be designated to serve as members of the Security Review Board by the Governor in Council to hear appeals against security decision.

These are:

- a. The Immigration Appeal Board. This board is appointed by the Governor in Council and can consist of not less than seven, not more than nine members to hear appeals against certain matters relating to immigration including appeals against deportation orders based on security grounds.
- b. The Citizenship Appeal Court. This court is appointed by the President of the Federal Court. It consists of one or more Judges of the Federal Court appointed from time to time to hear

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and determine all appeals from final decisions of courts that an applicant is not a fit and proper person to be granted a certificate of citizenship. This includes rejections based on security or criminal grounds.

- c. The Court Martial Appeal Court. This court is composed of puisne judges who also serve on the Federal Court of Canada. They hear appeals from members of the Armed Forces who have been convicted under the code of service discipline.

4. The proposed board should only concern itself with appeals from serving members of the Canadian government service. Individuals denied initial employment in the Federal service on security grounds should have no right of appeal. Serving employees who feel they have a grievance may appeal to the Security Review Board but only after all avenues of recourse have been explored. The sequence of appeal should be to:

- a. The DSO or Personnel Officer imposing the restriction who should review the situation with the National Security Service.
- b. The Assistant Deputy Minister (or equivalent) of the branch of the department concerned.

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- c. The Deputy Minister or Head of the department concerned who may wish to consult the Security Secretariat of the Privy Council Office and/or the Interdepartmental Committee on Security and Intelligence.
- d. The Security Review Board.

5. The Board's duties insofar as federal employees are concerned would be to examine evidence produced to substantiate a decision to:

- a. withhold or withdraw a security clearance;
- b. effect a release from the service;
- c. effect a transfer within the public service on security grounds;
- d. effect a demotion;
- e. deny a promotion.

6. To protect the rights of an individual who may be affected by any of the foregoing, he should be informed, where possible, of the derogatory information to facilitate a rebuttal, however, if the release of such information impairs the national security it should be withheld to protect the state.

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7. By designating members of existing legal bodies as the Security Review Board it would follow the established precedence of appointing members of the Federal Courts as members of appeal courts. Because of the varied philosophies in today's society there is a need for a segment of the judiciary system to assume the responsibility for the review of cases dealing solely with security matters. By utilizing existing legal bodies we would benefit by their ready made organization and support staff, their legal training, and their general acceptance by the public at large as an experienced impartial law body dedicated to the cause of justice.

Recommendations

8. There should be a Security Review Board consisting of one or more Judges of the Federal Court, appointed by the Governor in Council to deal with all appeals from government employees against security decisions.

9. Every appeal to the Security Review Board should be brought within thirty days from the day notice is given to the appellant of a departmental security decision which he wishes to protest.

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10. The Registrar of the Federal Court should be ex-officio the Registrar of the Security Review Board.

11. Subject to the approval of the Governor in Council the Judges of the Security Review Board may make such rules respecting the conduct of appeals and the procedure for bringing appeals as they deem necessary.

12. Upon the hearing of an appeal the Security Review Board may confirm or reverse the decision of a Department Security Officer, officer, or minister on a security matter affecting employment in the government service. Whether the recommended Security Review Board would also handle immigration and citizenship cases where there are security implications is being considered but is beyond the scope of this paper.