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The 70th meeting of the Security Panel was held in the Privy Council Committee Room, East Block, on Friday, June 21st, 1963, at 2:15 p.m.

PRESENT:

Mr. R.B. Bryce
Secretary to the Cabinet (Chairman)

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

Mr. R.G. Robertson
Deputy Minister of Northern
Affairs and National Resources

Mr. E.B. Armstrong
Deputy Minister of National Defence

Mr. G.W. Hunter
Deputy Minister of Defence Production

Mr. T.D. MacDonald
Asst. Deputy Minister of Justice

Commissioner C.W. Harvison
Royal Canadian Mounted Police

Mr. P. Pelletier
Civil Service Commission

Mr. J.S. Cross
Department of Citizenship & Immigration

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

ALSO PRESENT:

Mr. J.J. McCardle
Department of External Affairs

Deputy Commissioner G.B. McClellan
Royal Canadian Mounted Police

Superintendent W.H. Kelly
Royal Canadian Mounted Police

Mr. L.C. Cragg
Department of Defence Production

Mr. D. Beavis
Privy Council Office

1. The Panel had for consideration three related papers concerning possible revisions to Cabinet Directive No. 29, a security review order previously considered on January 23rd, 1959, and a draft public statement on security policy. The Chairman said that, due to interest in security matters recently demonstrated in the House of Commons and to the desire of the Minister of Justice to have directives and arrangements for security reviewed, it was important at this time for the Panel to consider what revisions in basic security policy might be desirable and what might be made public with a view to increasing public understanding and acceptance. He said that a Cabinet Committee on Security and Intelligence was to be formed and that, while the documents now under consideration were not likely to be the final word, it was desirable to obtain the views of the Panel which could be presented by the Chairman to the Prime Minister and the Minister of Justice. In light of their reactions, the Panel could then establish whether continued study would be required. Although the revised draft Cabinet Directive on Security was the most basic document at hand, events dictated that consideration first be given to the draft memorandum to the Cabinet Committee concerning possible arrangements for review and appeal in security cases.

I. SECURITY REVIEW ORDER

2. The Panel had for consideration a draft memorandum prepared by the Secretary, for the Cabinet Committee on Security and Intelligence, setting out the background of the Security Panel's earlier study of the feasibility of introducing a formal system of review and appeal for

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security cases in the Civil Service, and the recommendations which the Panel had made to the government in 1959. The Panel was asked to consider whether these recommendations were still valid.

(Security Panel Document SP-207 refers)

3. The Under-Secretary of State for External Affairs said that, while his department had experienced some painful separations for reasons of security, he was not aware of any instances in which a review had been requested. In the department each case was given careful scrutiny at several levels and was not handled simply between the departmental security officer and the deputy head, as might be the case in departments less deeply involved in security and consequently without internal review procedures. In this latter situation there might be justification for the existence of a consultative body in, for example, the Department of Justice or the Civil Service Commission, which might be of assistance to the R.C.M. Police in determining what adverse information should be sent to the employing department. On balance, however, the reasons against a formal appeal system cited by the Panel in 1959 were still compelling. In addition, he considered that it would now be of assistance to Ministers to be given some indication of the quantitative aspect of the demand for review and appeal.

4. Mr. McCardle stated that there had been no case of dismissal from the department without confrontation of the employee with the department's reasons for requiring separation, the onus then being on the individual to decide whether it was in his

interest to raise the matter publicly. He also said that Ministers should be made aware that Canada was, by formal agreement, committed to protect the information of our allies, and that the limits within which an Appeal Board could operate should be made most explicit.

5. The Chairman noted that in an average year, based on the past seven years' experience, there would be 22 dismissals

[redacted]

Ministerial reluctance to defend dismissals without publicly visible appeal machinery was compounded by such cases, and a number of Ministers favoured a review and appeal system of some sort. Although it had been pointed out to the Prime Minister and the Minister of Justice that there would be more grounds for public criticism if there were to be a formal Board with obvious limitations than there were without such quasi-judicial machinery, Mr. Bryce considered that the Cabinet Committee would wish to study the matter in detail, and would require the Panel's advice.

6. The Commissioner of the R.C.M. Police agreed that the existence of an Appeal Board would create more criticism that it would allay. The reasons against an appeal procedure stated by the Force in 1959 were still considered to be valid. If such a system were implemented it would only be valuable from the point of view of public

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relations, without being of real help to the individual and at the cost of weakening the security service. If implemented, the system would not meet public demand for counsel and revelation of sources, and would likely result in increased and continuing outcry for more apparently judicial procedures. The R.C.M. Police in most instances would neither be able to reveal the information itself or the source of the information,

disclosed as per decision of Feb. 25/85 (Flood-Jauvin)

In any event, the existing review and grievance procedures within the Force were adequate and the proposed system could not be applied to the R.C.M. Police. The Commissioner cited examples of boards of inquiry during the war in which judicial procedures were applied to matters which were not in their nature justiciable, with unsatisfactory results, and said that similar ill results would be likely if the proposed Order in Council were implemented.

7. Mr. Pelletier said that the Civil Service received some complaints and that one, if not two, appeals had been made against dismissals on the grounds of security in the past two years. However, with one exception such cases had been resolved without difficulty on grounds of unsuitability. He added that, in cases where dismissal was based on the continued residence of relatives behind the Iron Curtain, the individual was informed by the Commission of the reasons. He said that the Commission still felt that the arguments against the proposed system were convincing, and

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noted that the proposal in fact attacked only a small part of the problem. Not only were substantial numbers of public servants and others involved in security work not covered, but no provision was made for appeal of dismissals on the grounds of character weakness, which the Secretary had pointed out outnumbered loyalty cases two to one. He also said that although the proposal was undesirable, it could be accepted if the Government for its own reasons decided to implement it.

8. The Deputy Minister of National Defence said that the number of persons taken into his department annually was of the order of 10 to 12,000 and that this alone tended to defeat a careful check or confrontation, which could have resolved the [redacted] case. In cases involving drunkeness and homosexuality the man was confronted, but with cases of other sorts confrontation was virtually impossible. He felt that persons going before a review board would not be satisfied by the sort of procedure proposed and would continue to appeal and to feel unjustly treated. It was his view that the proposed system should not be recommended to the Cabinet Committee and that it should not be applied to the Armed Services. Procedures for the redress of grievances were well established in the Services, but unless there was a basic change in the policy of not stating that security was the grounds for dismissal, it would be difficult to demonstrate that grievance procedures were an adequate system paralleling the proposed Order in Council. It might in future become necessary to apply the Order to uniformed personnel as well, which would create many problems. Mr. Armstrong agreed to set out in detail in a memorandum to

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the Chairman the reasons why a formal appeal system should not apply to the Armed Services.

9. The Deputy Minister of Defence Production said that despite the recent outcry by [redacted] there had been no dismissals in defence industry and only about six transfers a year. He foresaw difficulty in avoiding application of the proposed system to defence industry but said that grave problems could arise if the system were applied. Defence contractors were spread throughout the country which would make the Board's work awkward, elaborate union arbitration machinery already provided excellent protection to the individual, and there might conceivably be a tendency on the part of management to use the Board in order to avoid decisions and shift responsibility from the company. On these grounds he felt that the Order could not be recommended to include defence industry.

10. The Assistant Deputy Minister of Justice said a review board which considered in a judicial manner matters which were not in their nature justiciable should be avoided. It might however, be necessary to consider a review of R.C.M. Police information before it was transmitted to the employing department, with a view to having a third party decide objectively what weight should be attributed to adverse information and possibly to decide what information should not be sent to the department. There might also be a need for a method of reviewing departmental decisions to dismiss individuals on security grounds. He outlined several cases in which the receipt

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of an adverse political brief had caused unwarranted delay or rejection, and said that an early review arrangement would alleviate such difficulties. He felt that the development of expertise in the security field might carry with it a developing bias, which could possibly be solved by a third party review at an early stage and before departmental views were formed.

11. The Chairman said that, while he agreed with the end that Mr. MacDonald had in view, he felt that a better method of ensuring that errors in judgement and failures in responsibility did not occur would be in the direction of more careful selection of security officers and better training for them. He pointed out that a view by the Panel secretariat, and indeed by the Panel itself, was available to departments and that this review procedure was continually in use, having the effect of the third party review suggested. The Deputy Minister of Northern Affairs and National Resources agreed and said that the exercise of judgement was an inescapable departmental responsibility, with the consequence that any third party interposed between the R.C.M. Police, as the source of information, and the employing department, which must decide the acceptability of the employee, would be a mistake. It was noted that referrals to the Panel or its secretariat were frequent, that departments concerned were aware of this method of consultation, that when a department granted a security clearance to an individual who was the subject of an adverse R.C.M. Police brief, the department was required to report its decision to the Force for information, and that in the view of the majority of Panel members the present system worked well and should not be weakened.

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12. After further discussion of the document, the Panel agreed that:

(a) a system of review and appeal should not be recommended to the Cabinet Committee on Security and Intelligence;

(b) the draft memorandum should be amended by the Secretary in light of the discussion at the meeting; and

(c) the Panel would meet at an early date to consider the revised draft memorandum as well as Security Panel Documents S.P. 205 and S.P. 206, which had not been discussed.

D.F. Wall,
Secretary.

Privy Council Office,
July 4th, 1963.

NOTE TO FILE:
Security Panel Documents S.P. 205 and S.P. 206, as referred to above, were not found on relevant file 5-1-2-D (Documents produced by the Security Panel Committee filed by number).
C. Gauthier/
ATI Section
16/04/84