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MEMORANDUM TO THE SECURITY PANEL

Security Policy - Appeal System

At its 61st meeting on July 17, 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 necessary 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. Despite more recent changes in Soviet policy as a result of "de-Stalinization" and events in Eastern Europe, the Sub-Panel sees no reason to change its views of the risks involved. 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 have already been established in the Department of National Defence;
- (c) those departments and agencies who wish to do so can always refer difficult cases to the Security Panel for review as many have done in the past; and

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- (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 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. This training should be followed up by a close continuing liaison between security officers and the secretariat of the Security Panel. 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 independent 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 relative merits and demerits of the procedure suggested in the attached paper:

- (a) In addition to the general advantages inherent in the purposes of the appeal system, which are mentioned in paragraph 4 above, a sporadic public demand for an appeal system would be met, at least to some extent. However, although the system is not intended to, and indeed cannot, provide legal safeguards, it is probable that further demands would be made, for example by the Canadian Bar Association, to bring the proposed system more in line with legal procedures by incorporating such features as the availability of counsel for the appellant and the possibility of cross-examination. In addition an individual dismissed after an appeal might well publicize the lack of legal procedures and claim violation of civil rights.
- (b) The individual would be permitted to know that his dismissal was based on security grounds and would be given an opportunity to make an answer, with the assurance of an independent consideration of his case. On the other hand, it would often be impossible for the Board to reveal to the individual all the information against him, in order that vital sources of information be protected. As a result, much of the effectiveness of the system would depend on the ability of the Board to use the information provided with adequate discretion and yet ensure that the individual was given every possible opportunity

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to clarify the questions raised by the information they had about him. Wherever, because of the circumstances of the case, they were unable even to question him indirectly, one of the fundamental principles of an appeal system, that of informing the appellant of all the reasons for the original decision, could not be met.

- (c) Departments and agencies would be able to inform the employee of the general reasons for his dismissal, and would no longer be forced, in order to maintain security, to seek out administrative reasons for effecting a dismissal actually required by security considerations. However, a number of problems would arise for departments and agencies; for example, there would probably be difficulties in making the appeal procedure available to employees of agencies of the Crown, such as the Canadian Broadcasting Corporation, which have agreements with trade unions concerning grievance procedures. There would also probably be pressure applied in order to make the procedure available to employees of private firms engaged in fulfilling classified defence contracts with the government, on the grounds that these employees, because of the nature of their work, were entitled to any appeal benefits available to public servants.
- (d) Another serious problem with which departments and agencies would be faced lies in the fact that they would be, to some extent at least, obliged to take the advice of the Appeal Board. In some cases the department might feel it had to accept the Board's advice against its own better judgement, and it would have to retain the responsibility for any harm that might follow. For example, an appellant whose appeal was supported by the Board and was as a result reinstated by his department would be in a position to state publicly that he had been unjustly judged by his superior officers. This could create a serious problem of morale within the department, and might also be exploited by the Communist Party. If the Board's advice were not taken, and the fact became public, the purpose of its establishment as a board of appeal might be questioned.
- (e) Perhaps the most serious disadvantage with which departments and agencies would be faced under the proposed system would be in dealing with cases where adverse information was insufficient to justify recommending dismissal, with its consequent possibility of appeal. It would appear that the majority of present security cases would fall in this category, which would leave departments and agencies no more acceptable alternatives than they presently have, while at the same time they would be required to administer a more stringent security policy than that

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presently in effect. In particular, the possibilities of transferring persons to less sensitive posts in other departments would be more limited than they are at present, as most departments would probably not be prepared to accept as transfers employees against whom they might eventually have to prepare a case for dismissal and appeal.

- (f) Related to this problem is that of dealing with persons who are security risks because of defects of character. While it is possible, and indeed advisable, that such persons be dealt with on purely administrative grounds rather than as security cases, there would undoubtedly be instances where a loyal employee dismissed because of a character defect would, possibly with some justice, choose to interpret his dismissal as having been on security grounds, and would demand the benefit of the appeal system which was available to persons being dismissed on grounds of disloyalty.
- (g) Some useful knowledge concerning the disposition of cases would accumulate in the records of the Appeal Board for the general guidance of all security organizations of the government. It is understood, of course, that these records would require the most careful handling, as would all the information made available to members of the Board, as obviously the procedure could only function properly if departments and agencies had complete confidence in the ability and integrity of the Board as a whole.
- (h) The actions of the Appeal Board would exert a useful discipline upon the consideration of cases for dismissal on security grounds, thus in effect creating and maintaining consistent standards relating to such dismissals. This, however, would depend upon the consistency and willingness with which departments and agencies were prepared to bring cases forward for dismissal. There is a danger that rather than risk "losing a case" before the Appeal Board, departments and agencies would be reluctant to handle difficult cases with the firmness they require.
- (i) The establishment of an Appeal Board would permit the government, in good conscience, to avoid the anomaly of knowingly 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. On the other hand, the dismissal of communists from the public service would point up the related anomaly of permitting the Labor-Progressive Party to operate within the country as a legal political entity.

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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. In view of the very considerable difficulties which are set out at paragraph 4 above, the Sub-Panel is forced to the conclusion that while its original recommendation concerning the danger of communists anywhere within the public service is valid, the system described in the attached paper and argued here would have the effect of weakening our system of protecting classified information in the public service. It of course remains a possibility for the government to establish an appeal system provided only for the dismissal of persons with access to classified information. It is however our view that these cases are so few, because the majority are now dealt with by resignation or transfer, that the advantages of an appeal system would probably be outweighed by the disadvantages referred to above.

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. Consideration should also be given to supplementing this training with close and continuing liaison between security officers and the secretariat of the Security Panel.

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

Privy Council Office,
Ottawa, February 26, 1957.