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REF. REL TO

FILE SECURITY PANEL

CHC/JS

The 64th meeting of the Security Panel was held in the Privy Council Committee Room, East Block, at 10:30 a.m. on Friday, December 27th, 1957.

PRESENT

The Honourable E.D. Fulton
Minister of Justice

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

Mr. F.R. Miller
Deputy Minister of National Defence

Lt. Col. Laval Fortier
Deputy Minister of Citizenship and Immigration

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

Commissioner L.H. Nicholson
Royal Canadian Mounted Police

Mr. A.D.P. Heeney
Chairman of the Civil Service Commission

Mr. W.R. Jakkett
Deputy Minister of Justice

Mr. G.G. Crean
Department of External Affairs

Mr. P.M. Dwyer (Secretary)
Privy Council Office

ALSO PRESENT

Mr. E.A. Driedger
Department of Justice

Mr. D.F. Wall
Privy Council Office

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Security Policy: Security Review Order

1. The Panel had for discussion with the Minister of Justice a memorandum from the Chairman to the Minister, setting out the Panel's views about a draft Order in Council which would establish a Security Review Board.

(Annexe "B" to the minutes of the 63rd meeting of the Security Panel, and Security Panel Document SP - 193 refer).

I. General Policy

2. The Minister of Justice said that he did not consider that the Order in Council provided a perfect system to protect the individual who was to be dismissed from the public service on security grounds. He recognized that the problems caused by the maintenance of continued and satisfactory security were such that any system of safeguards would inevitably fall short of what would be ideal.

3. Therefore he did not expect it would be possible to meet all the Panel's reservations fully. Nevertheless, bearing in mind that the purpose of the Order in Council was to give the individual such additional protection as might be possible, he hoped that by discussion it would prove possible to resolve the Panel's more pressing doubts. Otherwise he would have to give careful thought to the desirability of carrying through the present proposals.

4. The Chairman of the Civil Service Commission said that he was sure that all members of the Panel shared the Minister's objective - that of protecting the individual concerned in a security case. He also felt that the Order in Council under discussion provided as good a system of safeguards as was possible within the limitations of a security programme.

5. Nevertheless, from his own recent observations of a system with similar features at work in the United States, he was concerned that the proposed system would provide safeguards so limited that they would seem less adequate than the present administrative methods. Hence they might be the subject of intemperate public debate resulting from what would inevitably be largely uniformed criticism.

6. He also pointed out that under the present system a decision on a security case was considered as a part of good administration. Consequently it was a responsibility which, though difficult and worrying, was fully accepted by the deputy minister because he was required to protect classified information within his department. The establishment of a Review Board to advise the responsible Minister about a security decision would, in his opinion, tend to remove the deputy minister's responsibility. This might perhaps lead to a practise whereby departments, instead of seeking an administrative solution to security cases, would tend more frequently to recommend dismissal because of the existence of the Security Review Board.

7. Concerning Mr. Heeney's remarks about criticism of the limitations of the proposed Security Review Order,

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Mr. Fulton said that he recognized the dangers but considered that it would be better to provide a limited system of review rather than to leave a case where dismissal was an issue to what might be publicly thought of as an arbitrary decision. He was prepared to defend the system - which he did not propose to describe as quasi-judicial - on the grounds that, whatever its inevitable shortcomings, it would guarantee the individual some chance to speak on his own behalf.

8. With regard to continuing departmental responsibility, he assumed that wherever there were administrative possibilities for settling a security issue they would continue to be used. The Order was intended only to deal with the most difficult and sensitive cases where dismissal appeared to be the only possible course of action and where, consequently, a man's career might be ruined.

9. He expected that the information in these cases would be so serious that in effect the decision of the deputy minister would be supported by three persons outside the Civil Service. He did not think that deputy ministers should feel that they were relieved of responsibility.

II. Administrative Problems

(a) 10. Continuing the discussion of the responsibility of deputy ministers in deciding security cases, Mr. Crean pointed out that, if the Review Board did not support the deputy minister's tentative decision to dismiss an individual, there would in practice be compelling reasons for the department to retain an employee in whom it did not have confidence.

11. The Deputy Minister of National Defence said that not only would the department have to retain the employee, but the very fact of retention would permit the employee to infer that the deputy minister's tentative decision had been reversed. This would create difficult staff problems, and indeed the employee would have grounds for objecting strongly if he were retained but denied access to classified information.

12. The Deputy Minister of Defence Production questioned the ability of a Review Board to grasp in full detail the administrative problems which would result when a decision was reversed. In his view, the element of risk in any case must depend upon a detailed understanding of departmental operations and of the sensitivity and security assessment of the position, or future position, the employee might occupy. This was perhaps the most difficult judgement to make in considering a security case, and it was one which a department rather than a Review Board was best equipped to make.

13. Commenting on the difficulties which would be present if a deputy minister's decision were reversed, the Chairman suggested that consideration be given to an extension of the present proposal whereby in cases of exceptional difficulty the matter could be placed before the Security Review Board by the Minister concerned before any tentative decision to dismiss had been made. In other words, the department as well as the individual would have the right to take a case to the Board. In this way reversal of a departmental decision could often be avoided.

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14. The Commissioner of the R.C.M. Police reminded members that considerable thought had been given to the possibility of a preliminary review system earlier in the year when the whole question of review and appeal procedures had been re-examined. The Security Sub-Panel had made a recommendation and had devised a possible review procedure. The matter had been considered by the Panel and temporarily set aside for further consideration as a recommendation to Cabinet had not seemed timely. He suggested that the review procedure could now be examined again as he thought, from his own experience, that many departments and agencies would welcome a review of their more disturbing security cases.

15. Mr. Fulton said that if a deputy minister accepted the Board's reversal of his tentative decision - and he agreed that in practise this would result - he could see no alternative to his equally accepting that the employee had effectively been given a security clearance. In doing so the deputy minister would have to bear in mind that the Board had had both time and opportunity for a more extensive examination of the whole case than in the nature of things he could give it.

16. As to the problem of assessing the sensitivity of an employee's position, while the Board might be asked to accept the government's assessment of the risk it would undoubtedly wish to satisfy itself about the risk. It would therefore be for the department concerned to establish the sensitivity of the position in order that the Board might balance the risk against the information about the employee.

17. Mr. Fulton went on to say that he recognized the very considerable administrative problems which the reversal of a deputy minister's decision would bring in its wake. He was therefore interested in the Chairman's suggestion for a review at the initiative of the department in certain cases, as an additional measure, because it might provide for greater flexibility in handling cases. He would therefore ask the Security Panel to make a specific recommendation about the feasibility of such a review system in addition to the measures provided in the draft Order in Council.

(b) 18. The Deputy Minister of Citizenship and Immigration said that in his view the resolution of a difficult security case was a matter which required expert knowledge and experience built up over a considerable period of time. He doubted if a Security Review Board would be able to bring such experience to the problem, and was concerned that members of the Board might, on grounds of compassion, tend to disregard the vital security interests of the government.

19. Mr. Fulton replied that he recognized that it would be necessary for the Board to command the respect both of the public and of officials with long experience in security. This was a difficulty which would have to be faced when the Board was appointed and was one which he felt could be overcome.

(c) 20. Mr. Miller asked if, under the proposed Order, communists would be retained in the public service if they were not employed in sensitive positions. It seemed to him an anomaly that some could be retained while others found in sensitive positions were dismissed.

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21. Mr. Fulton answered that since it was not illegal to be a member of the communist party in Canada, it seemed doubtful that a person could be dismissed from the public service on that ground alone if the position he occupied was not a sensitive one.

(d) 22. Mr. Golden pointed out that special safeguards were being provided by the Order in Council to protect an individual against dismissal on security grounds. Why was it therefore not necessary to provide similar safeguards for dismissal on grounds of inefficiency?

23. Mr. Fulton said that in security cases a doubt had to be resolved against the individual. This was not necessarily so in cases of inefficiency. Additional safeguards were therefore justified where a security decision had to be made.

24. In this connection Mr. Heeney pointed out that the Civil Service Act provided a departmental hearing for an employee to be dismissed. The Order in Council under discussion would provide for a hearing by persons outside the public service. He questioned whether this might be contrary to the Act and whether it might impinge upon the doctrine of employment at pleasure.

25. The Deputy Minister of Justice said that it would be entirely proper to make an exception by executive direction.

(e) 26. Mr. Fulton enquired whether in the view of members of the Panel it would be desirable to consult with the Civil Service associations. The views of the associations about the proposed appeal system might be helpful.

27. Mr. Heeney said that an amalgamation might take place within a year which would mean that two major organizations would then represent some 80,000 out of 140,000 classified civil servants. The associations might be able to advise what demand for an appeal system there had been among their members, but in general their advice could not be well-informed on this subject.

28. Mr. Bryce added that the associations would undoubtedly support the proposed procedure in principle, and would certainly wish to nominate a member to the Security Review Board. He felt that their nomination would not help the Board, and suggested that the associations could be informed in advance of any public announcement once the decision to proceed with the system had been made.

III. Defence Industry

29. Mr. Golden said that he would be concerned if the provision of the draft Order in Council were to be extended to defence industry. Since it might be difficult to deny the additional safeguards to defence industry, it would be advisable to consider what might result.

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30. Under the present system the Department of Defence Production did not interfere in the companies' employment policy. Its personnel security measures were limited to informing a company when necessary that an employee might not be employed on a classified defence contract. Thus if an employee were dismissed by a company on security grounds and had the right to appeal to the Security Review Board, the Department would find itself in the position of defending a decision it had not made itself about a person whom it did not employ.

31. At present the Department's relations with the unions on security matters were harmonious, but difficulties might well ensue if the provisions of the Order were denied to union members.

32. Mr. Fulton said that if the provisions of the Order were found to be desirable in the public service it might seem illogical to deny them to industry. On the other hand members of the public service accepted lesser salaries than persons in industry, in favour of greater security of tenure and other benefits. It might be held that special safeguards were justified in the public service on occasions when security of tenure was threatened.

33. On balance, however, it seemed to him that it would be unrealistic to suppose that the system would not have to be extended eventually to defence industry if it appeared to be satisfactory in the public service. It would, however, be desirable to test the system in the public service before deciding to make it available to industries concerned. He felt that this aspect of the problem was one which would need further examination, and could be considered by a Cabinet Committee which he hoped would examine all the implications of the proposed Order in Council.

34. Mr. Fulton added that he had noted that a similar system in force within the public service of the United Kingdom had not been extended to defence industry there. He thought that it would be helpful to have the views of appropriate U.K. officials on this aspect of the problem.

IV. Conclusions

35. It was agreed that the Security Panel would give further consideration to the problem before it in the light of the present discussion, and in particular would

- (a) re-examine the Security Sub-Panel's earlier recommendations about a preliminary review system of security cases, and determine if a system could be proposed under which a department or Minister could refer cases to the Security Review Board, which would avoid the difficulties foreseen as a result of the Board disagreeing with a deputy minister's decision to dismiss, and advise the Minister of Justice further;
- (b) consider the problems which would follow an extension of the provisions of the draft Order in Council to defence industry; and

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- (c) enquire of appropriate U.K. officials of the attitude of U.K. trade unions to the establishment of the three security advisers.

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

Privy Council Office,
Ottawa, January 3rd, 1958.