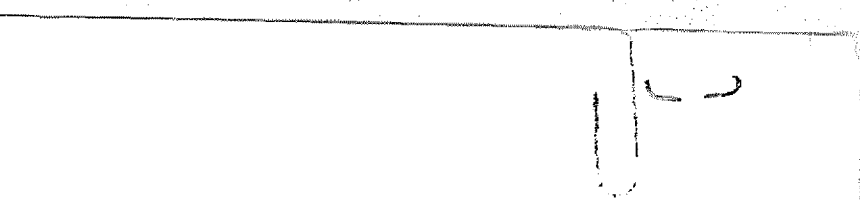

rec'd 24 June 48

for Bourke

THE CIVIL RIGHTS OF PUBLIC SERVANTS

A TENTATIVE STUDY

Not for release

[redacted]

——— Prepared by a Committee appointed by ———

the Council of the Ottawa Civil Liberties Association

Most useful for post WWII civil lib org. & security screening

Useful survey of the public service in Canada

> "Freedom of expression is guaranteed to the citizens of a liberal democracy not for the pleasure of the citizens but for the health of the state." -- Archibald MacLeish

INTRODUCTION

Civil liberties groups across Canada have resumed their activities since the end of the war. This was more than a return to the normal vigilance of responsible citizens in a democracy after years of wartime inactivity: it was a vigorous response to serious infractions of civil rights in Canada. Both protest and continuing study were required.

The Ottawa Civil Liberties Association dates its postwar activity from May, 1946. It has protested the infringements of civil liberties in the cases of Canadians of Japanese origin and of the people involved in the espionage investigation. The Association also recognized that certain Canadian laws which unduly limited civil liberties, stood in need of amendment. In May, 1947, a brief outlining proposed amendments to existing federal legislation was presented to the federal government and to all Members of Parliament.

It was also felt advisable to initiate the study of a number of basic long-range questions. In Ottawa, one of the most immediate subjects of interest was the civil rights of public servants. In the spring of 1947, the Council of the Association appointed a Committee to study this question. The report which follows is the record of the Committee's work to date. It met periodically from May to September, 1947. Its membership included public servants, persons in private employ, and several housewives. The principal difficulty encountered was the lack of up-to-date sources of information, either theoretical or factual.

The Committee's findings are by no means exhaustive. Its chief emphasis has been upon the federal service, in particular upon that portion of it which comes under the administration of the Civil Service Commission. A start, however, has been made in a field long neglected. It is hoped that the material of this report will stimulate a growing interest and provoke continued discussion, so that a solid foundation for positive action may be laid. The question merits the attention of both public servants and Canadian citizens alike.

CHAPTER I

THE BACKGROUND OF PUBLIC SERVICE NEUTRALITY IN CANADA

During the nineteenth century, the public service of Canada did not require its members to abstain from political activity. Public servants owed their appointment to the party in power, and they were in large measure loyal to that party. Thus, with a change of government, the new administration was faced with an unsympathetic public service upon which it had to rely to carry out the functions of government. There was a natural temptation for the government to conduct a wholesale purge and to place in office those upon whose support it could count.

This was the established practice in the United States. It was known as the "spoils system", justified by the theory that in a democracy, where all men were equal, all men had an equal right to public office; it was therefore fitting that office should rotate - a theory practicable only so long as government activities were few and the duties of public servants relatively simple.

This theory never gained full acceptance in Canada. A public servant was supposed to hold office during "good behavior". However, the extent to which political activity constituted "bad behavior" was never satisfactorily defined. In fact, patronage appointments were the rule; these were based on the desire to reward rather than on consideration of efficiency.

The public service did not, in the early days, have the best of reputations, and gestures towards reform began to be made. In 1882, an Act was passed under which appointments to the federal service were required to be made from a list of candidates who had been successful in examinations conducted by a Board of Examiners. The Board was not given sufficiently independent status, and its examinations were too easy: a Royal Commission reported in 1891 that political influence was still to blame for most of the inefficiency and abuses in the public service.

The impartiality of public officials was continually suspect. In 1891, for example, census officials were accused of deliberately falsifying their returns in order to conceal the government's failure to curb emigration to the United States - a live political issue of the day.

After the election of 1896, in which the Conservatives were defeated after eighteen years in office, public servants were removed by the hundreds. Adherents of the Liberal Party suffered a similar fate in 1911, when the Conservatives returned to power.

To counter these evils two Acts were passed, in 1908 and 1918: the first of these applied to federal employees in Ottawa only, and the second to those in all parts of the country. These Acts placed the appointment of public servants under a Civil Service Commission, with the exception of certain top-level appointments (by the Governor-in-Council) and certain minor part-time appointments for which competitive examinations would not be practicable. These Acts also prohibited participation by public servants in a number of political activities. (Appendix "A").

The 1918 Act and its amendments are in effect at the present time. The Civil Service Commission supervises the bulk of departmental appointments on the basis of merit. The expansion of government activities during recent years has led to the establishment of a variety of federal agencies, crown companies and government boards; the personnel of many of these are appointed without reference to the Civil Service Commission. Generally the regulations applying to these federal employees are similar to those under the Civil Service Commission.

The ideal of political neutrality is consistent throughout the service of the federal government. With but one exception, namely Saskatchewan the same holds true of the provincial services. This normal Canadian practice, involving restrictions in the civil rights of large groups across the country, became one of the main objects of the Committee's attention.

In order to arrive at a wider view of public service practice and theory, the Committee obtained the comparative data in the following section.

CHAPTER II

THE RIGHTS OF PUBLIC SERVANTS IN CANADA AND ABROAD

This brief chapter is designed to draw attention to the salient points in the comparative chart of rights in Appendix "C", to which the reader is asked to turn.

It is at once apparent that Canada permits a minimum of political rights to her public servants as compared with those lawful in a number of other countries. Thus, in Canada alone of the countries studied, it is illegal for a public servant to join a political party and carry out the normal functions of party membership, such as contributing party or campaign funds. It is true that, in the United States and in the United Kingdom, the manifestation of political support by public servants off duty must be of a restrained nature. Nevertheless, the fact remains that none other of the countries studied (United Kingdom, United States, New Zealand, Sweden, France, Czechoslovakia, and Saskatchewan) requires total abstention from political activity as Canada does.

It is interesting to note that in the case of New Zealand, France, Sweden, and the Province of Saskatchewan in particular, there are no limitations whatsoever upon the off-duty political activity of public servants.

Only in Canada and the United States can political activity (of the sort lawful for the population generally) lead to the dismissal of a civil servant. In New Zealand, the United Kingdom, Sweden, and France, grounds for dismissal are only such things as clearly impair the efficiency of the public servant in the execution of his duties (apart, of course, from serious criminal offenses).

In the matter of police investigation before employment, we find the Canadian federal service again at a disadvantage from a civil-liberties point of view. Only in Canada and the United States is the practice of confidential police investigation followed.

In the matter of political files kept after a public servant's employment, a number of countries also follow a more liberal policy than Canada. In some cases where such files are kept, the right of inspection and/or correction is guaranteed.

The fact therefore emerges that, with the exception of the provincial public servants of Saskatchewan today, Canadian public servants enjoy fewer rights than do their opposite numbers in several other countries whose traditions are similar to our own in other respects. Nor does there seem to be any indication that a fuller extension of rights to public servants in those countries has resulted in an administration conspicuously less efficient than the Canadian.

The keystone of public-service theory in all the countries studied is an effective merit system designed to protect the public interest and to ensure the greatest degree of efficiency in the service. It is only on the means necessary to achieve this more or less common end that divergences of practice appear.

In view of this objective, one is led to wonder if the present restrictions upon the rights of public servants in Canada can be validly justified.

CHAPTER III

PRINCIPLES

The Canadian Civil Service Act is designed to make the federal service non-political. There are definite statutory limitations to the civil rights of its employees. They exercise few of the normal rights of democratic citizenship, save that of casting a ballot during elections (provided, of course, that they satisfy provincial voting requirements). Although attendance at political meetings is not explicitly forbidden, the belief among public servants is that such attendance should be carried out with extreme discretion and without unduly attracting attention. This, rightly or wrongly, is the common reaction to the loosely-worded statement of political rights in Section 55 of the Civil Service Act (1918). Therefore, the more than 100,000 Canadians employed in the federal service are political neuters.

ARGUMENTS FOR POLITICAL NEUTRALITY

Many regard this as the ideal condition for a public service. It is claimed that the system has effectively removed the former evils of a patronage-ridden service; and that the non-political basis, in addition to providing a foundation of efficiency, can alone hold out such incentives as will attract a suitable personnel. In this view, political neutrality is an essential ingredient of the merit system.

Implicit in a good deal of the argument for a politically neutral service is the feeling that political activity is somehow unsavory and "only for the politicians". Therefore, too intimate an interest in politics will sooner or later disqualify a person from doing an honest job in the public service.

Political neutrality is also championed as a sure guarantee of continuity of administration, in the event of a change of government. It would be difficult for a minister to give his confidence to those openly partisan in opposed political groups, it is feared, and in such cases an unduly severe strain would be imposed on the merit system.

It is questioned whether the present legislation causes excessive hardship or contains dangerous limitations of the rights of public servants. Public servants themselves, it is claimed, show no wide-spread desire for an

extension of their political rights and seem reasonably satisfied with their present position. Some lack confidence that any improvement could be devised in the merit system which could strengthen it sufficiently to protect them against discrimination from a Government of an opposing political party.

Such, in briefest outline, are the arguments in favor of retaining the present legislation. Political neutrality, it is said, is indeed a small price to pay for the high returns it yields in efficiency, honesty and continuity.

ARGUMENTS AGAINST POLITICAL NEUTRALITY.

In the thirty years since the introduction of the present legislation, political neutrality has come to be accepted as the norm of public service practice. However, it can be seen from the data given in the previous chapter that the practice in some other countries is strikingly different. The divergence is most notable in the case of New Zealand, Sweden and France (and, within Canada, in Saskatchewan). Does this not suggest the need for re-examining the existing position in Canada?

According to those favoring a change in the existing legislation, the abandonment of political limitations does not necessarily involve the abandonment of the universal ideals of efficiency and honesty in the public service. In Sweden, the position is summed up in the following extract from "Sweden - A Modern Democracy On Ancient Foundations" by Nils Herlitz:

> "The non-political character of the civil service does not mean ... that the civil servant is expected to have no political convictions or even that he must abstain from party politics. In his service he is supposed to be scrupulously unpolitical, but outside he enjoys full civic rights. He may be active in party work, he may take part in municipal government, and he may be elected a member of the Riksdag. To be sure, there may be conflict between the political interests of a civil servant and his official duties, but it is supposed that in such situations the deep-rooted tradition that a civil servant should act impartically, without personal or party considerations, will be strong enough to resolve all difficulties."

Such a view raises the question - does the extension of full political rights to public servants really endanger their efficiency?

It might be asserted that the operation of an impartial merit system rules out the danger of patronage and partisanship, and does not require political neutrality. Perhaps the real weakness of the pre-1918 service in Canada was the absence of a thorough merit system. Today, it is argued, the requirements of efficient service are scientifically measurable to an increasing degree, and therefore the exercise of political rights during off-duty hours might be - or might be made to become - an irrelevant consideration.

In the modern state, a minority of public servants are involved in policy decisions. The larger group are engaged in purely routine tasks. Yet the present Act fails to distinguish between these groups; the clerical worker and the deputy minister are lumped together in the political prohibition.

On the highest policy-making level, appointments, or the retention of appointees may well require political confidence, whether such is openly admitted or not. (The appointment of deputy ministers today is by order-in-council, and the Gordon Commission in 1946 reported that the bulk of senior appointments were in fact being made from outside the service). But for the remainder of the service and most of its numbers, the ideal of political neutrality has no bearing upon its efficiency, which is objectively measurable.

Political neutrality may actually serve to dissuade some of our brightest minds from entering the service. The doubtful inducement of second-class citizenship may not appeal to citizens with the greatest talent and initiative. To an increasing degree, the present functions of public administration require the recruitment of employees of the highest calibre. Therefore, the aim of ever widening the area of active citizenship may coincide with the

demand for maximum efficiency. The size of the public service seems destined to increase, and the nation's dependence upon its calibre is greater today than ever before.

The alleged apathy on the question of political rights amongst the large body of public servants should be viewed as a warning rather than as a ground for complacency. If it is indeed true that this group within our society cheerfully accepts emasculated citizenship, a challenge to the democratic health of the nation is clearly presented. Apathy among Canadians is a poor guarantee of the maintenance and development of our institutions.

But Acts do not stop people from thinking for themselves. In fact, the attempt to inhibit political activity may lead to conscious deception, hypocrisy and fear lest political interests and convictions be discovered, even though no actual infringement of the law takes place. Inevitably, those critically inclined towards the government in power, might justifiably feel that they stand in greater danger of censure and possible disfavor. Such an atmosphere is not conducive to a consistently high morale in the public service.

It was also put forward that, even though many civil servants might choose through reasons of expediency or otherwise not to take part in political activity, nevertheless this right should be open to civil servants who were willing to accept the risks to their career that might well be involved.

Such were the arguments for and against political neutrality in the public service, raised during the first meetings of the Committee. It had begun its discussions with no preconceived goals except a desire to get at the facts in order to determine whether there might or might not be grounds for extending the rights enjoyed by public servants. It soon became clear that the greatest progress could be made by focussing the discussion on a group of definite principles, and discussing each of these in turn. In this way, a foundation would be laid for evaluating the relative merits of differing views on the question; and against a background of common principle, more fruitful discussion and study would be possible.

PRINCIPLES FOR PUBLIC SERVICE LEGISLATION

Accordingly, in the light of the comparative data summarized in the Chart (See Appendix "C") and the views submitted to committee meetings, a number of principles were drawn up and discussed by the Committee. On some there was unanimous agreement; on others opinions were divided; in the case of a few, it was decided that more detailed study would be necessary before any valid decision could be reached.

The principles and the Committee's decisions on each are as follows:

(1) The greatest extent of political liberty that is practicable should be accorded to public servants. Unanimously adopted.

(2) Political liberty must not re-open the avenues of patronage. Unanimously adopted.

(3) The most effective safeguard against patronage is a thorough application of the merit system. Unanimously adopted.

The Committee felt that the Civil Service Commission as at present constituted provided a good nucleus for an efficient merit system; that it should be strengthened, and a greater number of appointments brought under its direction; that the Civil Service Commission should broaden its activities within the service to ensure the operation of the merit system in advancements, etc.; that the remaining areas of, or loopholes for, patronage or favoritism should be eliminated; and that the Commission's machinery and methods should be kept under examination constantly, so that its operation be maintained at the peak of efficiency.

(4) The most thorough application of the merit system involves the widest adoption of objective techniques of measuring ability and efficiency. Unanimously adopted.

It was recognized that the human factor is always present as a barrier to complete objectivity. However, without going into a detailed study of objective techniques, the Committee believed that the adoption of objective standards and personnel practices would go a long way towards reducing the role of the human factor.

The operation of the merit system should apply to advancement within the service no less than to appointment to the service.

(5) Highly placed or policy-making public servants cannot be appointed on objective merit alone. Left in abeyance.

The Committee was unable to reach any decision on the differentiation between policy- and non-policy-making public servants. Some members believed that senior appointments must inevitably require a degree of sympathy with the party in power, and that they should therefore be left open to political appointment. Others disagreed on the grounds that to exempt senior positions from a merit system would involve the frustration of career public servants and thus lower the quality of the service. The relative political stability of government in Canada during the past twenty-five years made it even more difficult to make an accurate appraisal of the true nature of present senior appointments.

(6) The application of objective techniques of measuring merit would make a public servant's political opinions irrelevant, provided that such opinions in no way interfere with the performance of his duties. Unanimously adopted.

Should such freedom interfere with performance of duty, a public servant would naturally be subject to disciplinary action as in the case of any other failures to work efficiently.

(7) Files on a public servant should not contain any references to race, religion or political opinion, and should be open at all times to his inspection and correction. This was a crucial principle since no extension of political freedom to public servants would be effective in an atmosphere of apprehension caused by the existence of such files. There was no difficulty with respect to their racial and religious aspects, which were unanimously adopted. The question of political affiliation (if permitted) or political opinion produced a difference of viewpoint.

It was extremely difficult to ascertain the exact nature of present procedures with regard to public service files. Secret files drawn up by the police are undoubtedly maintained on an unknown number of Canadian public servants, as well as individuals outside the service. These files are not only drawn up in the course of specific investigations (often by request of the Civil Service Commission and other government agencies) but also are a normal activity of the Special Branch of the R.C.M.P. and are permanently maintained. (Cf. Hansard, April 2, 1947.)

It was announced by the government in the House of Commons in response to questions on April 14, 1947, that "the Civil Service Commission is required to satisfy itself as to the character and habits of persons appointed by it to government employment. These provisions do not, however, ... relieve departments of their responsibility for satisfying themselves as to the suitability of individual employees from the security standpoint. National loyalty is an aspect of security, and it is not considered possible or desirable to establish any rigid criteria for testing loyalty in this sense."

More recently it has been announced that Communists are barred from the service.

While the difficulty of establishing explicit criteria of loyalty may be recognized, nevertheless the Commission is presumably using standards of some sort as a guide in the day-to-day application of its responsibilities.

It is known that in the United States public service, the most flimsy evidence linking an individual with ideas that are at all left of centre has been used as grounds for suspicion of disloyalty (Cf. Appendix "E").

The existence of unspecified standards, determined in secret, which play a part in deciding the appointment, advancement or dismissal of federal public servants in Canada today could be regarded as a serious weakness in the merit system. Against failure to appoint there is, of course, no appeal; and in any event, the existing appeal procedure is limited in its scope. The secret nature of existing files can hardly fail to be a source of considerable anxiety within the public service and a powerful deterrent to the exercise of whatever freedoms may be permissible at the present time. They would be doubly dangerous if more political activity were permitted.

The inability to inspect and possibly correct such files might hold serious dangers of inaccuracy, and might induce personal denunciation within the service itself.

The Committee was unanimously apprehensive of the operation of such secret factors in the existing merit system, an apprehension heightened by the widely deplored action taken under the executive loyalty order in the United States public service of March, 1946. Although there were fortunately few signs of the same sort of political hysteria in Canada, it was feared that safeguards against any sudden eruption of a similar practice in this country were uncertain. (See Appendix "E").

The Committee, however, was not able to reach unanimous agreement regarding possible reforms of the existing system. Though it was agreed that any files that were kept should be open to inspection, some members, while not in the least minimizing the possibly dangerous implications of political files, nevertheless felt that it was the duty of any government to protect itself against potentially dangerous citizens. The existence of an alert and organized public service, backed by an informed public opinion, could minimize the potential injustice arising out of the maintenance of files.

Another view was that while a government should retain such files, the manner of their compilation, verification and use should be prescribed in detail to ensure the maximum protection to the individual.

Some members, on the other hand, urged the complete abolition of such files and used the example of New Zealand and France in support of their argument. In Sweden, they pointed out, all material on the personal files of public servants is open at all times to inspection and challenge.

(8) An impartial, effective appeal procedure is required to guard against infringements of the merit system in appointments, dismissals, disciplinary action, and complaints under Principle 9. Unanimously adopted.

(9) There should be safeguards to prevent persons being forced into any political activity against their will. They (a) should be in no manner compelled to take part in any political undertaking, or to make any political contribution, or be in any manner threatened, or discriminated against for such refusal; (b) should not directly or indirectly use or seek to use the authority or official influence of their position to control or modify political action of any other person. Unanimously adopted.

Such safeguards would make possible the extension of full political freedom to public servants without in any way opening the door to political patronage or coercion. Public servants with complete freedom and with no danger to their position could individually choose either to be politically active or not during their off-duty hours.

(10) Such political activities as are considered permissible should be clearly defined by statute, in order that public servants can have no doubts regarding their rights and administrative procedures. Unanimously adopted.

The Committee recognized that too rigid a definition might be a limitation upon the further evolution of rights; it was of the opinion, however, that once the principle of developing political freedom had been accepted, and had gained widespread confidence, further legislative changes would be a relatively simple matter, and that therefore the merits of concise definition (to eliminate uncertainty and fear) far outweighed its possible drawbacks.

(11) An alert and informed public opinion, both inside and outside the public service, should be encouraged as a check against arbitrary action. Unanimously adopted.

Leadership in such opinion must fall to organizations such as the civil liberties associations and public service associations in all parts of the country.

(12) Public servants should refrain from criticism of policies in the administration of which they have a share. Left in abeyance.

The difficulty of an accurate assessment of the relative importance in the administration of policy throughout the various grades of public servants prevented a decision on this principle. However, some members felt that it was better to err on the side of liberty, and that responsible public servants could be relied on to exercise the measure of tact best suited to their position.

(13) Such limitations as may be imposed upon public servants under the supervision of the Civil Service Commission, should not necessarily be imposed on employees of government boards, crown companies, or other publicly owned institutions. Unanimously adopted.

POINTS FOR DISCUSSION:

Readers are invited to ask themselves, in the light of the foregoing discussion, which of the following civil rights ought to be extended to civil servants:

(1) Contribution of money to any political or other lawful organization?

(2) Membership in political parties, clubs or other lawful organizations?

(3) The explicit right of attendance at, participation in, and organization of, lawful public meetings, discussion or study groups?

(4) Active electioneering?

(5) Standing for full-time civic, provincial or federal elective office (in the exercise of this right, there should be reasonable provision for the preservation of the individual's service status as well as the public interest)?

(6) Inspection and correction of such personal files as are maintained?

(7) Free expression of political opinion off duty, subject to the exigencies of the service?

> "A people indifferent to their civil liberties do not deserve to keep them, and in this revolutionary age may not be expected to keep them long. A people who proclaim their civil liberties but extend them only to preferred groups start down the path to totalitarianism."
>
> --Mr. Justice Wm. O. Douglas of the U. S. Supreme Court

APPENDIX "C"

POLITICAL RIGHTS OF PUBLIC SERVANTS (As verified March 1, 1948)

	UNITED KINGDOM	UNITED STATES	CANADA	NEW ZEALAND
1. Can Civil Servants join Political Party	Yes - but should maintain "A certain reserve"	Yes, Other than one which advocates the overthrow of the constitutional form of Government.	No	Yes
2. Contribute to or collect campaign funds?	Do.	Can contribute. Can collect except from other Civil Servants or in official buildings.	No	Yes
3. Manifest Political Support?	Do.	No	Not in practice	Yes
4. Actively electioneer?	Depends on Departmental regulations	No	No	Yes
5. Run for Civic Office?	At discretion of head of Department	Yes, in purely non-political cases.	Yes	Yes
6. Run for national or Provincial Office?	No	No	No	Yes, gets campaign leave but must resign position after election.
7. What penalties for political activity?	No specific penalty.	For "disloyalty" dismissal; for political pressure, dismissal from service, no reinstatement in the same position.	Depends on Deputy Minister's judgment (in practice), legally, dismissal.	None
8. What distinction in rights of policy-making and other grades?	None - but the higher the grade, the greater the care taken.	No distinction among Civil Servants appointed by C.S. Commission; those appointed by President openly political.	None	None
9. Does known political belief jeopardize engagement or promotion?	No	Yes, if regarded as "subversive".	Yes, in case of Communists.	No

POLITICAL RIGHTS OF CIVIL SERVANTS (As verified March 1, 1948)

	UNITED KINGDOM	UNITED STATES	CANADA	NEW ZEALAND
10. What investigation before employment?	Enquiries made of referees named by Candidate as to character & ability.	Loyalty investigation	Occasional RCMP investigation	No police or other investigation.
11. Is political or philosophical file kept?	No	Yes	Yes	No
12. Has individual access to file?	No	No	No	No
13. Has individual right to correct file?	No	Only in written reply to charges or admin. hearing.	No	No
14. How is file used re promotion etc.?	No	To remove "disloyal" personnel.	To keep "disloyal" personnel in check	No
15. Are there limitations on merit system?	No	More than two members of same family entering civil service; personnel appointed by President.	Deputy Minister's are appointed by Order in Council.	No political limitations.
16. What are grounds for dismissal.	Inefficiency, misconduct in widest sense of the term.	Inefficiency; "disloyalty"	Political activity; soliciting C.S.Commission for promotion; marriage in case of women; Governor General's pleasure.	Misbehavior, retrenchment, incompetence, criminal offence.
17. Is there appeal machinery?	Yes	Yes	Retrenchment Yes	Yes

POLITICAL RIGHTS OF PUBLIC SERVANTS (As verified March 1, 1948)

	SASKATCHEWAN	SWEDEN	FRANCE	CZECHOSLOVAKIA
1.	Yes	Yes	Yes	Yes
2.	Yes, but cannot be compelled to	Yes	Yes	Yes
3.	Yes	Yes	Yes	Yes
4.	Yes, but not in office hours and not abusing official position.	Yes	Yes	Yes
5.	Yes	Yes	Yes - if elected they must obtain leave of absence from their duties.	Yes
6.	Yes, gets 30 days leave of absence prior to election	Yes, leave of absence granted for Parliamentary Service.	Yes	Yes
7.	None.	None, except in the case of "unlawful" activities, such as seeking to overthrow government by force.	None	None
8.	Political activity must not impair Civil Servant's usefulness in his position.	Higher officials serve at pleasure of King-in-Council; other officials appointed permanently, by King-in-Council or department.	Political changes are not in general followed by changes in the high personnel of the Administration.	None
9.	No.	Not in theory.	No.	None, except fascism.

	SASKATCHEWAN	SWEDEN
10.	No political or religious investigation.	Merit and skill investigated.
11.	Only service file kept.	Only service file kept.
12.	No but a representative of a union has.	Yes
13.	Union may recommend corrections on employee's behalf.	– Refers purely to service file. Yes
14.	For qualifications and related experience.	Only factors are merit and skill.
15.	None	None, but there is no commission machinery.

verified March 1, 1948)

FRANCE	CZECHOSLOVAKIA
None	Qualifications and national reliability (pro-Fascists and collaborators out)
No - the law specifies that a public servant's file must not contain any information on this subject.	No
Each public servant has a personal file to which he has access when disciplinary action is taken against him.	No
No	No
The authority in charge of promotions must consult the file of the public servant in question.	No
The only limitations on merit system are the conditions of seniority in the grade (e.i. Grade III Administrative Officers must have at least 10 years of service before they can be promoted to the next highest rank). With this reservation promotions are made only by merit.	No

POLITICAL RIGHTS OF CIVIL SERVANTS (As verified March 1, 1948)

	SASKATCHEWAN	SWEDEN	FRANCE	CZECHOSLOVAKIA
16.	Unsatisfactory job performance or gross misconduct.	Negligence, Omission, want of judgment or skill (may lead to prosecution)	Serious professional misdemeanor, which it is the duty of a disciplinary board to judge, half of this disciplinary board being composed of representatives of the Administration and half of elected members of the civil service.	Gross disciplinary offenses.
17.	Yes	Yes, including right of public inspection of Admin. documents, and challenge of all appointments.	Yes, the "Council of State", which is the highest French administrative court, whose task is only to appreciate the conformity with law of the procedure followed in the dismissal of a civil servant, without any appreciation of the facts themselves which have led to such decision.	Yes.

APPENDIX "E"

LOYALTY ORDER OPPOSED

Is Called Nazilike Law Which Should Be Repealed

The writer of the following letter was former Deputy Chief Counsel (Economics) at Nuremberg. As such he was senior trial counsel in all Nazi industrialist cases.

To the Editor of the New York Times:

Having recently returned from Nuremberg, I am struck by certain ironical contrasts between our Government's prosecution of Nazi criminal organizations at Nuremberg and our parallel proceedings here against so-called disloyal American organizations. It would seem that we are providing American justice for Nazis, but Nazi justice for Americans.

In Germany, when it was determined to prosecute the notorious S. A., S. S. and the German general staff, we observed the highest traditions of American legal process. Indictments, setting forth the charges in detail, were served on the affected organizations. They were afforded the right to counsel of their own choosing, failing which we furnished them with counsel. They were given their day--indeed, their months--in court. And it might be added parenthetically that, in spite of our Government's sincere belief in the criminality of these organizations, two of them, the S. S. and the general staff, were exonerated.

KNOWLEDGE OF ACTIVITIES

But even with respect to the convicted S. A., our legal process was by no means ended. For the condemnation of the S. A. in itself condemned nobody. Membership in the organization, per se, was no crime. It became additionally necessary to show that each person sought to be charged with responsibility for membership joined the convicted organization or remained in it, knowing of its nefarious activities.

No member of the S. A. could be convicted on the basis of the condemnation of his organization without first being afforded a full hearing at which he could submit any exculpatory or extenuating testimony. Only after this double trial could a member of an illegal organization be punished, and then generally by a token fine.

This was American due process in Germany. This was our show window display for the German people to see that no one, not even Goering, could be condemned without a fair trial.

Upon returning to the United States I found that, whatever we may have taught the Nazis, we have absorbed into our own legal system the German tyranny that we fought and inveighed against. I refer to our executive order which provides that any one of the two and one-half million employees in the executive branch of our Federal Government can be summarily fired if he is, or ever was, a member of, or in "sympathetic association" with, any organization or combination of persons placed by the Attorney General of the United States on his private black list.

CONDEMNED ORGANIZATION

The condemned organization receives no indictment or even intimation that its loyalty is impugned. It gets no hearing or opportunity to contest the charge. The Attorney General merely says: "Thou art condemned." Thereupon its members, past, present and future, are automatically adjudged guilty of the heinous offense of disloyalty to their Government. The American citizen, unlike his German counterpart, is afforded no opportunity to challenge the Attorney General's ex-parte condemnation of his organization.

This conviction without trial, borrowed from the darkest days of the Nazi inquisition, is a startling innovation in American judicial procedure. Its gravity is accentuated by the fact that the member of the condemned organization is subject to an extraordinarily severe penalty. Nominally, he is discharged from Federal employment. This is bad enough. But the practical effect is an economic death sentence. For one can imagine how remote are the chances of a person, discharged for disloyalty to his Government, finding other employment.

APPENDIX "E" (CONT'D.)

Another aspect of the Executive Order presents a striking and sickening parallel to a Nazi decree which provided that no person could hold public office unless he could prove "by his conduct that he is willing and able to serve loyally the German people and the Reich." (Law regarding citizens of the Reich of Sept. 15, 1935).

Our own order likewise provides the very fluid word, "disloyalty," as a criterion of removability.

ELASTIC CONCEPTION

We know that in Germany any whisper of dissent was considered "disloyalty." Do we have a right to assume greater tolerance of opposition here? We have all witnessed how the more circumscribed words "Communist," "totalitarian" and "subversive" get flung around even by men in high places. Breathes there a liberal worthy of his salt who has not been called a Communist? How much more misused will be the new criterion, that very elastic conception, "disloyalty"?

On this charge of personal disloyalty, the governmental employee gets a trial--a mockery of a trial. The charges, says our Executive Order, shall be only as specific as, "in the discretion of the employing department or agency, security considerations permit." And this is further hedged by the rule that the investigative agency may refuse to disclose the names of "confidential informants."

Yes, you get a trial on an indictment that doesn't inform you of the charges, and with no opportunity to confront or examine, or even to know of, the complaining witnesses. And the burden of disproving undisclosed charges rests on the defendant. It should be added--shades of the malodorous German People's Courts!--that the tribunal which hears these cases is appointed by and responsible to the department head, who may be the complainant.

This is twentieth century American justice.

The letter of Zechariah Chafee Jr., et al ("The New York Times", April 13), while assailing the Executive Order, takes the calm view that "the situation can be redeemed" by the self-imposed discipline of the "heads of the individual departments or agencies" charged with enforcement.

Sure; the department heads can go beyond the requirements of the law and gratuitously create for themselves more reasonable standards. But I find no comfort or redemption in this hope. In the first place, we proudly boast that ours is a government of laws, not of men. It is our laws which furnish us the prophylaxis against the possibility of abuse from evil or stupid men. Second, I would prefer, particularly in this hysterical period, not to be dependent on the grace and conscience of the wide-eyed crusaders who may make up a large part of our enforcement units. In these days, when the issues are getting sharper and hotter, when dissent from Government policy brings down on the head of the dissenter pathological fury, even threats of jail, it is dangerous to have to depend on those who have the power to use it temperately.

In my judgment, the Executive Order is, both substantively and procedurally, the most Nazi-like and terrifying law since the Alien and Sedition Acts. It should be repealed in toto. There are enough laws already on our books to protect us against treason, sabotage and real disloyalty.

A. L. POMERANTZ.

New York, April 26, 1947.