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A Description of Some Key Provisions of Canada's New Civil Service Act

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Aller au sommaire du numéro

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Résumé de l'article

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The following article is an analysis of Bill C-71, which resulted from the Commission's report and from the work of a Special Committee of the House established in 1961.

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INFORMATIONS

A DESCRIPTION OF SOME KEY PROVISIONS OF CANADA'S NEW CIVIL SERVICE ACT

J.C. BEST

The Civil Service Act, passed in 1918, had never been substantially modified for the 43 years following its adoption. In 1957 however the Government asked the Civil Service Commission to review personnal procedure in the Government Service and to prepare a report. The report produced was entitled Personnal Administration in the Public Service.

The following article is an analysis of Bill C-71, which resulted from the Commission's report and from the work of a Special Committee of the House established in 1961.

Government employees in Canada are of several caterogies. The largest single group is represented by the classified civil servants who number some 130,000 employees and whose terms and conditions of employment are established in *The Civil Service Act*. This group of 300,000 employees are by far the largest single segment of Government Employees, and are in what is generally considered to be the « career service ». Together with the many other categories they go together to make up what is generally referred to as *The Public Service of Canada.*

The Civil Service operates on the merit principle of appointment and promotion. The Civil Service Act of 1918 (R. S. C. 48, 1952) was principally designed to eliminate the past evils of patronage and to prevent future abuses in appointment and promotion in the service. This rather monolithic objective remained as the Act's core for the 43 years it was in use. It is interesting to note that in those 43 years no major amendments were made to the Act. When, during wartime, the Civil Service Act was found to be deficient in flexibility, the terms of the War Measures Act were invoked to supersede the Civil Service Act.

In 1957 the Government of the day appointed Mr. A. D. P. Heeney, the Canadian Ambassador to the United States, as Chairman of the Civil Service Commission with specific instructions to completely review Personnel Procedures in the Government Service and to prepare a report and recommendations based on the Commission's findings. When the Government changed later in the same year, the new Cabinet continued Mr. Heeney's instructions to carry on the survey.

Some two years later, in early 1959, the now famous report: *Personnel Administration in the Public Service — Report of the Civil Service Commission of Canada,* was released. Following much discussion, and not a little disagreement from various quarters over its provisions, the Government, on June 30, 1960, tabled Bill C-77 « An Act Respecting the Civil Service of Canada » in the House of Commons.

Because of the short time left in the session and the strong staff side feeling that the Bill should not be rushed at that stage, it was withdrawn and re-introduced on March 2, 1961, as Bill C-71. Bill C-71 contained only minor differences from Bill C-77.

A Special Committee of the House of Commons under the Chairmanship of Mr. R. S. MacLellan, was established to hear rperesentations and to review the proposed legislation on a clause by clause basis. The committee commenced its work on March 20 and concluded its hearings on June 23, 1961. In that three month period representations were heard inter alia from Civil Organizations and other interested groups, the Canadian Labour Congress, the Minister of Finance, the Civil Service Commissioners, and an official of Treasury Board.

The amended Bill was passed by Parliament prior to adjourment on September 29 and was proclaimed to come into effect on April 1, 1962 as Chapter 57 of the Revised Statutes of Canada.

This article will basically be divided into two distinct sections. One section will deal with certain key sections of the new Civil Service Act and will, in essence, be a discussion in more detail of these sections than was contained in series of articles apprearing in The CSAC Journal on the Civil Service Act.

The second section will compare areas of appeal under the new (1961) and old (1918) Civil Service Acts, and an explanation of the differences to be found between them.

One basic difference in employment conditions within the Government Service as compared to private industry is that terms and conditions of employment are a matter of law and not collective agreement. In private employment laws do not generally set *specific* terms and conditions of employment with the exception of such matters as the general legal provisions for collective bargaining and union activity, worksman's compensation and industrial safety. However, these do not have a direct continuing and close effect on every day-to-day aspect of employment as does the Civil Service Act.

There are positive and negative aspects to working under a law. On the positive side, there is the fact that terms and conditions are a matter of public knowledge, are established in the law and the regulation, and subject always to differences in interpretation, can be in most areas relatively clear-cut.

On the negative side, there is the fact that the law tends to be rather rigid, changes are difficult to achieve and the question of interpretation in certain areas is always a potential source of difficulty. A change in government policy or attitude towards its employees can also cause unilateral changes in the law.

However, it is a matter of public policy in Canada that the terms and conditions of employment in the classified civil service should be established under the Civil Service Act. Since no Government in the last 44 years has shown any inclination to change this policy, it seems obvious that for the foreseeable future at least, we, as Government employees, must accept the law as being a factor that is here to stay for some particular time.

Within this paper, it is my intention to deal with eight particular aspects of the new Civil Service Act. [1] I should also point out that in some areas the Act only specifies that the Commission has general regulatory power but does not establish basic legal criteria. These cannot be discussed until the Civil Service Regulations, drawn under the new Act, become available.

The eight particular areas which I plan to deal with are as follows:
A comparison of the role of the Civil Service Commission under the new Act and the old Act with emphasis on one major change.

Clause 7 and Clause 10 dealing with consultation in general and also specifically on matters of pay.

The difference between Clause 11 in the present Act and Clause 11 in the new Act.

The control, organizations, etc., of deparmental establishments.

The Civil Service Commission's sole authority to make appointments.

The conditions covering the individual civil servant's tenure of office.

The terms of the Act in the case of employee lay-off.

Demotion, dismissal, suspension, appeal, etc.

As I have indicated above, a separate section of this paper will deal with appeals. It should be noted that there is the necessity of some slight over-lap since in the sections mentioned above, I will also indicate those areas where the appeal right is embodied in the Act. Other areas of possible conflict will be covered under the grievance procedure which has yet to be worked out, and for which the Act only provides a legal basis and leaves the details to the Civil Service Commission.

THREE MAIN FEATURES

The Chairman of the Civil Service Commission, the Hon. S. H. S. Hughes, writing in the January 1962 edition of Public Personnel Review, suggests that there are basically three main features to the new Civil Service Act. He lists these as follows:

1. The preservation of Independance of the Civil Service Commission, and the unimpaired continuance of all fundamental principles of the merit system including the sole right to classify positions.

2. Clarification of the role of the Commission in those areas with which it is concerned but which do not have a direct bearing on the merit system, (organization).

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(1) For a more general and detailed discussion, I would again refer you to my series of articles in the November, December, February and March issues of *The CSAC Journal.*

3. The conferring on the staff associations the right to be consulted on all matters which have to do with regulations and conditions of employment and positive recognition in the law of their existence and function.

Fundamentally there is little reason to disagree with the Chairman's outline of the main features of the new Act. The one exception is in two above, where he fails to consider the negative aspects of the fact that the Commission is no longer responsible for the actual organization of a given Government Department. This change, in my view, raises the *possibility* of undesirable juggling and maneuvering of staff to the detriment of individual civil servants. Secondly, the Chairman is probably a little more sanguine of our right of consultation than at this moment we, in the staff associations, have a right to feel.

One other very subtle and perhaps important change is the very distinct establishment of definitions of the « Civil Service » as opposed to the « Public Service ». Quoting from the same article the Chairman has this to say: « Coincidentally, it (i.e. the Act) will introduce for the first time a meaningful distinction between the terms « Civil Service » and « Public Service » which have often been used interchangeably in the past. In future, the « Civil Service » will be defined as that portion of the service under the Civil Service Act, approximately 130,000 employees. « Public Service » will be defined as to those Departments and agencies which are referred to in Schedule « A » of the Public Service Superannuation Act, and which embraces about 180,000 employees, including the 130,000 under the Civil Service Act ».

Perhaps for some of us it would have been a little more direct if the Chairman had also indicated that the basic fact of this new distinction is that certain of the people now in the Public Service, (Crown Corporations and various other agencies) can be declared as eligible for promotional competitions in the Government Service and may also be transferred directly into the Government Service under certain conditions. In addition, the definition has been further widened to permit, where necessary, members of the Armed Forces or R. C. M. P. to compete for positions formerly reserved to the Civil Service. The effects of possible widening of the area of closed (promotional) competition are very serious indeed from the viewpoint of the working civil servant. Such action could restrict the number of promotional opportunities that he will be able to utilize for his own advancement.

It is well to indicate here briefly that the Act also establishes certain legal rights for the civil servant which have never before existed. The only present legal right the civil servant has exists under the Public Service Superannuation Act which establishes superannuation as a contract between the employee and the Government, under which the employee has legal right to his pension or return of contribution regardless of circumstances under which he may leave the service.

Under the new Act, there will be the legal right to appeal in circumstances which will be outlined below, and also the civil servant will, for the first time, have a *right* to his pay. The individual civil servant will now have the right to go to Court over a failure to receive his pay, or any denial of pay he feels to be unjustified.

PART 1 — POWERS AND DUTIES OF THE COMMISSION

Except as noted below, the Commission's powers under the « New Act » are as follows and are almost identical with those under the old Act. Clause 6 of the Act states:

The Commission shall

(a) appoint qualified persons to the civil service in accordance with the provisions and principles of the Act;

(b) report to the Governor-in-Council upon such matters arising out of or relating to the administration or operations of this Act and the regulations as the Commission considers desirable and, at the request of the Governor-in-Council, upon any matter pertaining to organization and employment in the public service;

(c) at the request of a deputy head, report upon any matter pertaining to organization and employment in the department;

(d) obtain the assistance of competent persons to assist the Commission in the performance of its duties;

(e) operate and assist departments in operating staff development training programmes; and

(f) perform such other duties and functions with reference to the public service as are assigned to it by the Governor-in-Council.

In addition Clause 8 of the « New Act » provides that the Commission shall have access to all records, etc., as required for performing its duties, and also gives them the authority to act as Commissioners under the Inquiries Act. These provisions were also contained in the « Old Act ».

Changes in the Role of the Civil Service Commission

Within the Commission I sense that there is a strong feeling that the Commission's role has in no way been weakened despite the fact that it is no longer directly responsible for the organization of a given Department. Organization can be defined, in essence, as the use of the various positions within the Department. The Commission claims that it still maintains the same control over the service through its continued exclusive right to classify positions. We feel that this contention is open to some rather strong reservations.

Under the new Act, the Deputy Head assumes a much strengthened responsibility for the organization of his Department. It is the Deputy Head alone who now makes recommendations to Treasury Board as to the number of employees required, the required duties, responsibilities and qualifications of each and also the plan of organization showing how the various branches or divisions of the Department shall be established and the relationship between the persons to be employed therein. Having drawn up this statement, the Deputy Head proceeds directly to the Governor-in-Council (which is, of course, the Treasury Board) for approval, change, amendment, etc.

There is a distinct contrast here between the provision of Section 9 of the old Act and Section 15 of the new Act. Under the old Act the Commission after consultation with the Deputy Heads of their officials, prepared the plan of organization, and in particular the organization in each Department was as far as possible to be based on the same general principles. Once this plan had been finalized it would then be submitted to the Governor-in-Council. The key fact was that under the old Act no change could be made « in the organization of any Department until it had been reported upon by the Commission ». Now the Commission will not in any way be involved in this process until the time comes to actually classify the positions requested by the Deputy Head. It seems unfortunate that the Commission's control in this area has been so sadly weakened.

The possibility of abuse of this section should perhaps be cause for considerable concern by the Association. If positions can be juggled and moved around at the will of the Deputy Minister, it is quite conceivable, based on past experience, that this could be done in certain cases to the disadvantage of an individual employee without sufficient reason or cause from an efficiency viewpoint.

It is true that the Commission will still classify positions and establish salary levels for them; but the possibility of Departments creating positions at levels higher than is required (empire building); and also at levels lower than required now exists since the Commission will be primarily concerned with seeing that the classification structure is properly maintained and not with the other aspects of organization such as basic principles of organization.

These are the basic changes in the Civil Service Commission's role under the new Act. Time alone will tell whether they will be advantageous or not.

Consultation and Pay Determination

The most widely discussed section of the new Act, and the one that actually marks a new (if inadequate) departure is Section 7, which deals with consultation with civil service staff organizations. This Section should, however, be read in conjunction with Section 10 which deals with recommandations on pay rates coming from the Civil Service Commission. While the consultation provided under Section 7 covers much more than pay, it is in the area of salaries that in the past the most difficulties have been experienced by Government employees in their relations with the Government of the day.

Basically, Section 7 provides for consultation in three ways:

1. Consultation between «appropriate organizations and associations of employees» and the Minister of Finance

2. Consultation between these organizations on the one hand, and the Civil Service Commission and the Minister on the other hand

3. Consultation solely between the Associations and the Commission in those areas where the Minister of Finance is not directly involved. (Basically these would relate to working conditions and other matters which do not have direct financial overtones.)

The relationship between Section 10 and 7 is that Section 10 empowers the Commission to:

1. Review and make recommendations on pay rates to the Governor-in-Council, and

2. In making such recommendations it shall consider the requirements of the service, and

3. It shall take into account rates of pay and other terms and conditions of employment prevailing in Canada for similar outside work and

4. Shall also take into account the relationship of the duties of the various classes within the service, and any other considerations the Commission considers to be in the public interest.

Before such recommendations are formulated the Commission is obligated by the law « from time to time as may be necessary to consult with representatives of appropriate organizations and associations of employees with respect to the matters specified in this Section ».

Since we are discussing pay and consultation in these general terms, it is well to note a very significant change in Sections 10 and 11 of the new Act as opposed to Section 11 of the old Act. Section 11 of the old Act contained some of what is in Section 10 above. It specified the Commission should make pay recommendations, but did not lay down any criteria as to what should be considered as proper comparisons for such salary rates. The other key difference between the new Section 10 and 11 and the old Section 11 is that under the old Civil Service Act it has been ruled that the Government could not legally change or alter a formal Civil Service Commission pay recommendation. It could accept or reject, but it could not modify or enlarge. Under the new Section 11, however, this has been changed. Section 11 gives the Governor-in-Council the following authority:

(a) To establish rates of pay for each grade and,

(b) To establish the allowances that may be paid in addition to pay.

The Governor-in-Council can do this after the Civil Service Commission has considered the pay situation and put forward its recommendations. Whether or not this change is good or bad can be viewed in two ways. If it is considered as a means of making consultation, and eventually negotiation, meaningful, then it is certainly an improvement for the better.

If, however, it is used as a device to permit the Government of the day to cut back on pay recommendations for fiscal or other reasons, then the whole basis of fair salary comparison could become relatively meaningless. As with other Sections of the Act, only time and experience will permit us to know precisely what the merits of the new system will be. In fairness, the Government has emphasized both in Parliament and elsewhere, its desire to deal in good faith and we can only assume that these good intentions will be lived up to.

Returning now to Section 7, in the absence of knowing specifically how consultation will work, it is very difficult to make any valid assessment. There are distinct difficulties to consultation on both sides. On the official side, there is always the ever-present question (whether real or imagined it is nevertheless there) of the supremacy of Parliament and what, if any, discretion can be given to those below Ministerial level to act on the Government's behalf.

On the staff side, there is the very difficult problem of a large number of associations and organizations. It is our view that for consultation to work, staff side must be represented only by the three major organizations, the Civil Service Association of Canada, the Civil Service Federation of Canada and the Professional Institute of the Public Service of Canada. Smaller departmental groups (all but one are affiliated with the Civil Service Federation) will have to get their representation through the Federation. It will also be necessary to set up workable staff side machinery to ensure that on the staff side there is opportunity for every viewpoint to be heard and considered so that a unified position can be taken in consultation with the official side.

It may be recalled that during discussions before the Parliamentary Committee which studied the Bill, it was emphasized that consultation was the first step in an evolutionary process towards negotiation and arbitration. The big question mark was and is how long this process should take, and with what speed the Government is prepared to bring about what we feel to be essential and proper labour-management relations in the Government Service — negotiation with provision for independent arbitration of disputes.

There is little else that can be said about Section 7. Attached to this paper as an appendix is the actual wording of the section. Any specific questions could be raised and answered during delivery of this paper or in the questions period following.

Establishment

It has already been noted above that the Commission's functions in helping to set the actual establishment of a Department are now considerably less than in the past. Section 17 of the Act provides procedure for the addition of a new position after the establishment has been approved by the Governor-in-Council. In order to add a new position the Deputy Head will proceed as follows:

1. To describe the duties and
2. The responsibilities and
3. The qualifications required and
4. The Commission will then classify the position.

Once this has taken place, the Deputy Head (subject to regulations which will be established by the Governor-in-Council) would then be able to issue a certificate putting forth the classification that the Commission had approved, and also indicating when the position would be added to the establishment. The Governor-in-Council

(also under Section 17 of the Act) has retained the power to add to the establishment of a Department a position classified by the Commission. The Deputy Head also has the power under the Act to abolish any position that is vacant by issuing a certificate, the nature of which will be established by the Governor-in-Council. The Act also specifies that the Deputy Head must send both Treasury Board and the Commission a copy of any certificate issued for a new position established after classification by the Commission.

The Act provides in Section 19 that the Governor-in-Council (i.e. the Treasury Board in this case) may from time to time review departmental establishments, and after considering recommendations of the Deputy Head may delete or add positions to the establishment. Under this Section the Deputy Head must submit not only a plan of organization, but any other information or material the Governor-in-Council may require.

Summing up then it is clear that the Deputy Head alone will now deal directly with the Treasury Board. Whether or not the Treasury Board and its staff will either wish to or indeed have the staff and facilities needded to provide the same overall review and guidance in this area that the Civil Service Commission has practiced in the past is not known. It should be noted that there is nothing to stop Treasury Board or the Governor-in-Council from requesting the Civil Service Commission to perform any of these functions in their behalf, but there would seem to be little possibility that this will, in fact, happen.

Some feel that the right of the Deputy Head to handle his own departmental establishment as he sees fit will expedite departmental personnel administration and eliminate much unnecessary work.

Appointment

Except for certain specific exceptions outlined in the Act, the Civil Service Commission has the exclusive right and authority to appoint people to the Government Service. This marks no new departure from the old Civil Service Act, although the new Act is much more detailed in spelling out how appointment shall take place.

The various procedures for appointment under the New Act are as follows:

1. The Deputy Head requests that the Commission fill the position.
2. The Commission may fill the position by making an appointment.
   (a) To the vacant position.
   (b) To a lower position in the same class.
   (c) or to an alternate position as provided under sub-section 5 of section 20 (see below).

Lower Position —

If the Commission fills the position by appointment to a lower position in the same class, the lower position automatically substitutes for the vacant position on

the establishment so long as « there is an incumbent in the lower position ». (Example A: grade 4 vacancy occurs on an establishment which the Civil Service Commission fills by appointment at the grade 3 level. So long as the position is occupied by a grade 3 appointment it is considered a grade 3 position).

Alternate positions —

Sub-section 5 of Section 20 provides that where a position on the Department's establishment is vacant and the Deputy wishes an appointment made « to an alternate position not on the establishment « this may be done » without abolishing the vacant position ».

This is done under provisions of Section 17 provided:

(a) « The alternate position is not higher than the vacant position; and

(b) « there shall not be incumbents of both positions at the same time ».

It should be noted that the Act says the Commission « may » make such appointments but is not obliged to do so.

Other Sections —

Section 21 provides that « Wherever . . . it is possible . . . and in the best interest of the Civil Service, appointments shall be made from within the public service by competition ».

Section 22 gives the Commission the right to make an appointment « without competition . . . from within the public service . . . » The Commission, in using this section must consider « any recommendations of a Deputy Head concerned and also choose » the person « . . . who in the opinion of the Commission is best qualified. »

Section 23 gives the Commission power « where, in . . . (its) opinion . . . a suitable appointment cannot be made from within the public service (to make) the appointment . . . in accordance with this Act from outside the public service. »

Temporary Appointments in Emergency —

A Deputy may make an appointment in an emergency under Section 24:

1. « for one period not exceeding two months » in Canada, and
2. « for one period not exceeding three months », outside Canada.
3. « The Deputy Head shall forthwith notify the Commission and Treasury Board » of such appointments.

Remuneration for such emergency appointments shall be either:

1. That « established by the Governor-in-Council for the class and grade within which (a similar position) . . . is included » or

2. A higher one « as may be fixed by the Governor-in-Council, » or

3. Where no comparable position exists the Governor-in-Council will fix the rate.

Special cases —

In certain special cases the Commission may make « an appointment . . . without competition ». These appointments may be made because:

1. the appointment is urgently required
2. there is limited availability of suitable candidates
3. the position requires « a person having special skill or knowledge » and the duties are « of an exceptional character ». (The CSAC opposed this later provision out of concern that it might be abused.)

Those appointed to the « Civil Service » from the « Public Service » can only have a maximum 6 months probationary period (Section 48 provides one year in other cases). The Deputy Head may, after notice to both the employee concerned and the Commission, « further reduce or waive the probationary period ». Section 26 (1 & 2).

Transfers and Promotions —

The right to appeal a transfer or promotion from the public service to the civil service may be appealed under Section 27 if:

1. Such selection is by closed competition the unsuccessful candidates may appeal.
2. Such selection was without competition by « the persons whose opportunity for promotion has thereby been prejudicially affected, as prescribed by the regulations. »

Appeals will be disposed of « before the transfer or promotion becomes effectives... »

Restrictions —

Section 28 of the « New Act » restricts appointments of those in the public service to the civil service to those made under Section 24 (emergency appointments) and Section 25 (urgency, no available candidates, those having special skills etc.)

In addition any such appointee must have had a minimum three years service in the public service.

Diplomatic appointments —

Section 29 specifically gives « Her Majesty » (i.e. the Governor-in-Council) « The right or authority of her Majesty to appoint her ambassadors, ministers, High Commissioners, Consuls General or others, to any other country.

Tenure of Appointment

While in the last one to two years the concept of temporary as opposed to permanent status in the Government Service has by and large disappeared, the new Act makes it plain that there will be no basic differentiation of this nature in the status of classified civil servants.

The new method of describing a civil servant who has successfully passed his probationary period is that he will be appointed to a continuing position in the Government Service and tenure will, of course, depend on the original nature of the appointment. That is if the appointment is a temporary or term appointment, it will only be for a period specified. Under Sections 50 to 53 of the Act, tenure of an employee is established. The basic provisions are as follows:

1. That an employee will hold a position during the pleasure of Her Majesty subject to the Act and Regulations. (Always subject to the right of the Governor-in-Council to remove or dismiss an employee.) This provision is exactly the same in principle as in the previous Act and also continues the requirement that an Order-in-Council is necessary to dismiss an employee once his probationary period is over.

2. Term appointment must cease at the expiration of a specific terms of employment.

3. An employee is required to give two weeks notice.

4. Subject to the approval of the Deputy Head and the reservatoin that no one has been appointed or selected to replace him an employee may also withdraw his resignation by notice in writing.

5. Absence without any authorized leave of one week or more from a position is sufficient grounds for the position to be declared vacant at the end of the one week.

The tenure of a civil servant is therefore not changed in any way. Basically the old distinction of permanent and temporary status in late years has been more fictitious than real and in some areas may actually have even caused a little latent discontent.

In late years the only basic difference was the requirement of an Order-in-Council to discharge a permanent employee which was not required for a temporary.

Lay-off

While tenure is reasonably secure, this does not mean that there are not periods in time in the Government Service when positions become surplus to requirements. When this happens and no alternate position can be found or transfer is not feasible, the Act provides a lay-off procedure that will apply in all cases.

If an individual is laid off, the Act provides that he may be appointed without competition to another position for which he is qualified *provided* the position is at the same or lower maximum rate of pay as his own former position. This right of appointment without competition is for an original minimum period of one year, but it may be extended for a total additional period of one year if the Commission so wishes. The present procedure whereby a lay-off has priority over anyone on an eligible list for which he is qualified or for a lower position in the same class still continues.

However, if an employee is appointed to a position in the Public Service or declines a position with the same or higher maximum pay his lay-off privileges may end at the Commission's discretion.

The difficult situation where a branch or unit of a Department is to be abolished is also covered. The Act provides that the Commission in these cases will consider all factors and conduct any examinations, tests, interviews, etc., necessary, and will then compile a list in order of merit of the employees concerned. The lowest ranking candidate will be the first to be laid off, and so on in reverse order of standing. It is significant to note here that seniority is not the overriding factor that it is in some areas in industry, and would only be one factor coupled with others for consideration.

Demotion and Suspension

As with any area of employment, the Act also provides disciplinary measures when required for misconduct, inefficiency or other reasons. Sections 56 to 59 outline the legal limits for demoting and suspending employees and also embody the right of appeal to the Civil Service Commission of any such decision.

If an employee is felt to be guilty of either misconduct or incompetence the Deputy Head may recommend demotion in one of the following ways to the Commission:

1. By reducing pay to a rate in the range for the class or grade *not* lower than the minimum.

2. By appointment (i.e. demotion) to a lower grade position in the class.

3. By appointment to another position with a lower *maximum* rate of pay.

The Deputy Head may also « by notice in writing suspend the employee for a period not exceeding six months ». The Act requires that the Deputy Head must give *notice in writing* of any decision to demote an employee.

The employee recommended for suspension or demotion has the right to appeal such a decision to the Civil Service Commission within a period of two weeks of receipt of the written notice described above. If no appeal is entered the Commission has no alternative but to carry out the Deputy Head's recommendation. (NOTE: On and after April 1, any employee who is notified of a suspension or dismissal recommendation should immediately file notice of appeal unless he or she feels the penalty is fair. Failure to appeal within the specified period will mean automatic implementation of the penalty after the two week appeal period has elapsed.)

In cases where an employee is alledgedly « Guilty of misconduct or incompetence » and the Deputy Head wishes to investigate such allegations; or where there are criminal proceedings in progress against an employee, the Deputy may suspend up to a maximum period of six months on written notice to the employee.

In the case of such suspension:

* The Deputy must « forthwith » notify the Civil Service Commission
* An employee is not entitled to remuneration while under suspension
* The Deputy may terminate a suspension at any time

* The Commission may at the Deputy's request extend the suspension to a maximum of six additional months.

* Following completion of an investigation or inquiry the Deputy shall:

(a) If he is satisfied that the employee is guilty recommend dismissal or demotion.

(b) Suspend the employee for a further period not in excess of six months.
(Such suspensions under this Section (59) will be in the manner described above, under Section 56, for suspension and in the manner described below under Section 60 for dismissal.)

Where dismissal is to be recommended the following procedures apply under Section 60:

1. The Deputy must notify the employee in writing of his intention to recommend dismissal.
2. The employee may (as a matter or right) appeal within two weeks of receiving such notice.
3. If there is no appeal to the Commission against such a recommendation the Deputy Head is then free to recommend dismissal.
4. If there is an appeal the Commission must make a full report to the Deputy Head on the matter « and if the Deputy Head recommends dismissal to the Governor-in-Council he shall transmit with his recommendation the report and recommendation of the Commission ».
5. The Governor-in-Council may effect dismissal under this Section.

The Act (Section 61) specifically forbids political activity of the following nature for any « Deputy Head or employee ».

(a) Partisan work in connection with any election « for the election of a member of the House of Commons, a member of the Legislature of a Province or a member of the Council fo the Yukon Territory or the Northwest Territories.

(b) Contributing to or receiving money from any political party.

(c) In any way dealing with the funds of a political party.

For any forbidden activity outlined above « every person who violated sub-section (1) (i.e. of Section 61) is liable to be dismissed ».

As a protection against wrongful dismissal the Act specified that: « No person shall be dismissed for a violation of sub-section (1) (i.e. of Section 61) unless the alleged violation has been the subject of an inquiry at which that person has been given an opportunity of being heard, personally and through his representative. »

These provisions are considerably improved over the old Act and provide for a full and proper hearing which was not the right of an employee so accused under that Act.

Consultation with Staff Organizations

7. (1) The Minister of Finance or such members of the public service as he may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to remuneration, at the request of such representatives or whenever in the opinion of the Minister of Finance such consultation is necessary or desirable.

(2) The Commission and such members of the public service as the Minister of Finance may designate shall from time to time consult with representatives of appropriate organizations and associations of employees with respect to the terms and conditions of employment referred to in sub-section (1) of Section 68, at the request of such representatives or whenever in the opinion of the Commission and the Minister of Finance such consultation is necessary or desirable.

(3) The Commission shall from time to time consult with representatives of apropriate organizations and associations of employees with respect to such terms and conditions of employment as come within the exclusive jurisdiction of the Commission under this Act and the regulations, at the request of such representatives or whenever in the opinion of the Commission such consultation is necessary or desirable.

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PART 2 — A COMPARISON OF APPEAL PROVISIONS BETWEEN THE CIVIL SERVICE ACT OF 1918 (R.S.C. CHAPTER 48) AND THE CIVIL SERVICE ACT OF 1961 (R.S.C. CHAPTER 57)

APPEALS — Under the Old Act (1918)

In the classified Federal Civil Service most positions are filled on the basis of merit (i.e. by competition). Competitions may be:

1. confined to the Branch or unit of the Department concerned.
2. confined to more than one Branch or unit.
3. confined to a regional or other geographic location.
4. open to employees in more than one Department.
5. open to the public in a specific geographic area.
6. open to the public anywhere in Canada.

Obviously under such a situation there must be some means of reviewing decisions made in promotional appointments in 1 — 4 above. There must also be provision to ensure the right of appeal in those cases where promotion is by direct appointment and not by competition (certain reclassifications).

Under the old Civil Service Act there is no *legal* provision for such appeal. Some years ago the Civil Service Commission, at the urging of the Associations

agreed to establish an appeal procedure under the general regulatory powers of the old Civil Service Act, Section 5 (1 & 2).

This procedure established the *privilege* of appeal to the Commission as follows:

1. Against the appellant's standing in relation to the successful candidate or candidates.

2. Against the appellant's general standing in cases where an eligible 11st is to be established.

3. Against a failure to qualify if the competition does not produce a qualified candidate.

4. Against a selection for promotion made without formal competition and when one or more other employees are entitled to consideration.

5. Against denial of an annual salary increment.

Demotion, dismissal or suspension is also appealable under the old Act but to the Deputy Head of the Department under Section 118 of the Regulations. The Deputy may nominate a senior officer to hear such appeals and they must be heard within ten (10) days.

Commission Appeal Boards have been composed of three members. A Chairman who is a Civil Service Commission Officer; a Departmental Representative; and an appellant's representative, who is usually a staff association representative. During the past two and one half years appellants may also be represented by legal counsel who can present his case to the Appeal Board but does not participate in the Board's final decision.

Appeal Boards are empowered to *recommend sustain* or not *sustain* an appeal, but their recommendation is subject to approval or rejection by the *Commissioners.* If an appeal is sustained, a new rating board is held usually with new rating officers. The results of the second rating board are usually not appealable.

Appeal Boards are *not* rating boards. They cannot order any change in the standing of candidates or in the marks given. The Boards can recommend changes in methods or procedures consistent with the merit system.

APPEALS — Under the New Act (1961)

Under the new Act appeals under certain circumstances become a matter of legal right and not a discretionary privilege. In addition, the new Act grants an individual accused of political partisanship the right of inquiry under the *Inquiries Act* and the right of Counsel.

The Act provides the right of appeal in the following circumstances:

1. Any transfer or promotion made either by closed competition or wihtout competition that prejudices either the unsuccessful candidates's or anyone affected's opportunity for advancement (Section 27).

2. Any recommendation that an employee be demoted (Section 56 (3-5).

3. Any suspension of an employee (Section 59 (4) and Section 56 (3-5).

4. Any recommendation for dismissal (Section 60 (2-4).
NOTE: Under the new Act the definition of demotion includes reduction in pay.

5. Any denial of a statutory increase (Section 67 (6 & 7).

In all the above cases the right of appeal now applies as a matter of right.

Section 70 outlines the prescribed procedure for appeals. At the time or writing detail is lacking as to the actual composition of Appeal Boards. It has been suggested that a « tribunal » approach will be used with the three Board members appointed by the Civil Service Commission without nomination from either the Department or the appellant. Both the latter would send representatives to present their respective cases. Another suggestion is that the present procedure will continue with relatively little change.

Under Section 70, Appeal Boards:

1. Will consist of three persons appointed by the Commission

2. Shall conduct an inquiry into the matter being appealed

3. Shall give the employee appealing the opportunity to be heard « . . . personally and through his representative ».

4. May be authorized « . . . to exercise the powers of the Commissioners under Part II of the *Inquiries Act* . . . »

5. Shall make a report to the Commission and recommend disposition of the appeal.

Political Partisanship

Under the1918 Act (until 1958) a sworn declaration by a Member of Parliament made under the prohibition of political activity section of the Act (Section 55 (1 & 2) was sufficient grounds for dismissal. A civil servant so accused of political activity was subject to summary dismissal without hearing or appeal. While since 1958 this system was not used it still remained in the law.

Under Section 60 of the new Act while political partisanship is still cause for dismissal (60 (1), there must be an inquiry before such dismissal occurs and the individual must «... be given the opportunity of being heard, personally and through his representative ».

The following political activity is expressly forbidden:

1. Partisan work in a federal or provincial election or in behalf of a member of the Council of the Yukon or the Northwest Territories.
2. Contributing money to a political party or parties.
3. Receiving money from a political party or parties.
4. Any dealing with the funds of a political party or parties. (Section 61 (1).