

The Committee audits the entire range of CSIS investigative activities — targeting, special operations, surveillance, warrants, community interviews and sensitive operations — in a particular region of Canada

meeting with foreign officials — and did not participate in police interviews. The Committee was satisfied that the Service cooperated with the RCMP within the parameters of operational policy, procedure, and the *CSIS Act*.

B. Annual Audit of CSIS Activities in a Region of Canada

Report #97

Every year the Committee audits the entire range of CSIS investigative activities — targeting, special operations, surveillance, warrants, community interviews and sensitive operations — in a particular region of Canada. A comprehensive examination such as this provides insight into the various types of investigative tools the Service has at its disposal, and permits the Committee to assess how new Ministerial Direction and changes in CSIS policy are implemented by the operational sections of the Service.

The Targeting of Investigations

The targeting section of the regional audit focuses on the Service's principal duty — security intelligence investigations authorized under sections 2 and 12 of the *CSIS Act*. When examining any instance in which CSIS has embarked on an investigation, the Committee has three central concerns:

- did the Service have reasonable grounds to suspect a threat to the security of Canada?

- was the level of the investigation proportionate to the seriousness and imminence of the threat?
- did the Service collect only the information that was strictly necessary to advise the government on the threat?

Committee researchers also keep watch generally on the manner of the Service's adherence to its own internal policies, rules and directives.

Methodology of the Audit

In the region at issue, the Committee randomly selected ten investigations conducted by CSIS during the 1996-97 fiscal year. However, because of changes to the Research Staff complement in the course of the review, the Committee limited the audit to seven investigations — five counter terrorism cases and two counter intelligence cases. SIRC researchers reviewed all files and operational messages in the Service's electronic data base. Researchers also interviewed the CSIS officers who carried out the investigations as well as the managers who oversaw them.

The Committee's Findings

In all cases, the Committee found that CSIS had reasonable grounds to suspect a threat to the security of Canada. The targeting levels were proportionate to the seriousness and imminence of the threats, and no actions were taken against non-targets. The Committee concluded that the Service, in most of the cases we reviewed, collected only the information that was strictly necessary to advise the government about the threats. Several cases, and the

Management of Targeting

Target Approval and Review Committee

CSIS' capacity to target (or launch an investigation into) the activities of a person, group or organization is governed by policies that rigorously control the procedures and techniques to be employed. The Target Approval and Review Committee (TARC) is the senior operational committee within CSIS charged with considering and approving applications by Service officers to launch investigations. TARC is chaired by the Director of CSIS and includes senior CSIS officers and representatives of the Department of Justice and the Ministry of the Solicitor General.

Levels of Investigation

There are three levels of investigation, with Level 3 being the most intrusive and accompanied by the most stringent legal controls and management challenges. Level 2 investigations may include personal interviews and limited physical surveillance. Level 1 investigations are for short durations and allow CSIS to collect information from open sources and from records held by foreign police, security or intelligence organizations.

Issue-Related Targeting

An issue-related targeting authority allows CSIS to investigate the activities of a person, group or organization that may on reasonable grounds be suspected of constituting a threat to the security of Canada, and are related to or emanate from that specific issue.

issues they raised for the Committee, are summarized below.

An International Movement

With respect to the first case, the Service's Counter Terrorism Branch submitted a Request for Targeting Approval (RTA) to the Target Approval and Review Committee (TARC), to allow the Service to investigate a terrorist threat emanating from several persons and groups who were associated with an international movement. The Targeting Committee approved the request and operating under the approval, the CSIS Regional office conducted the investigations.

In its audit, the Committee focused on the Region's investigations of the threat posed by two terrorist groups from another country which CSIS viewed as having the potential to conduct acts of politically-motivated violence in Canada. While the Service based its assessment of the threat in part on the groups actions in other countries, the Committee noted that openly available analyses of the international movement were not unanimous on whether the movement possessed the ability to control events in different parts of the globe. We found that the Service's own studies reflected a similar ambiguity.

The Committee focused on the Region's investigations of the threat posed by two terrorist groups from another country

Counter Intelligence and Counter Terrorism

The terms “counter terrorism” and “counter intelligence” reflect the Service's organizational structure wherein the main national security investigative functions are divided in two: the Counter Terrorism Branch addresses threats to the public safety of Canadians and national security caused by war, instability and civil strife abroad, as well as international terrorism. The Counter Intelligence Branch monitors threats to national security stemming directly from the espionage activities of other national governments' intelligence operations.

The Region conducted three investigations under the targeting authority. The first stemmed from allegations that three persons were linked to the two terrorist groups. The Service's inquiries revealed that the allegations were unfounded.

A second investigation resulted in the Service learning about sometimes violent factional clashes in a community. The Service acknowledged that although it believed initially that there were reasonable grounds to link these persons to a terrorist organization, the investigation found no such evidence. Instead, the Service concluded that the suspect activities were criminal in nature and not politically motivated. Conforming to standing rules in such situations, the Service turned the information over to law enforcement organizations and did not pursue the matter further.

The third investigation dealt with the activities and movements of a foreign national suspected of having contact with extremist groups. As with the factional clash investigation noted above, at the outset of the review the Committee had some misgivings about the Service's investigation since the

person involved was not clearly linked to the terrorist group. CSIS' investigative efforts failed to clearly establish that the groups were active in politically-motivated violence in the Region.

Notwithstanding the Committee's view that the targeting document did not establish a strong case against the targets, it is our view that international events at the time gave the Service reasonable grounds to pursue possible threats to the security of Canada, and that the resulting investigations were reasonable and proper.

A Foreign Program

The second case involved a counter intelligence investigation where evidence of a threat proved from the Committee's perspective, at least initially, to be somewhat elusive. The Target Approval and Review Committee had authorized a low-level investigation of a person who came to Canada as a participant in an international employment program that the Service believed was sometimes used by a foreign state to carry out acts of economic espionage. The Service subsequently sought and was

given increased investigative authority to permit it to collect more information.

The Committee learned that the stimulus for the investigation of this person — and others participating in the same program — could be found in two parallel investigations: the Service's inquiries into the clandestine activities of the foreign intelligence service of a particular country, and CSIS' authority to investigate generally activities of any foreign state directed against Canada's economic interests.

The Service's interest seemed to focus on the target's employment prior to that connected with the work program in an area the Service considered may have been vulnerable to foreign espionage. Ultimately, the Service found that the target had only limited access to confidential documents and had brought more expertise to Canada than the target could have obtained here. The Service terminated the investigation. The information collected did not suggest that the subject of the investigation was in contact with foreign intelligence officials.

The key issue raised by the case for the Committee lies in the nature of the information that prompted CSIS to target the subject in the first instance. The Service had received information from foreign sources that led it to launch its investigation. CSIS commented that the investigations of others in this program were inconclusive. The Committee was not comfortable with the Service obtaining information on other participants in the subject's program in the absence of strong information that they

posed a threat or that their expertise pertained to vulnerable economic sectors in Canada.

A Sensitive Investigation

A third case which drew our attention concerned the threat of politically-motivated violence in Canada. The Service investigated a person believed to have been involved in activities on behalf of an international terrorist organization. In its request for targeting authority, the Service stated that the target held a position as a member of a sensitive social institution and had the potential to use the institution to further the objectives of the terrorist organization.

Explicit rules are in place which govern the Service's conduct of investigations dealing with members of sensitive social institutions and the Committee found that the Service acted in complete accordance with these policies. Because of the sensitivity of the institution to which the individual belonged, CSIS Headquarters issued specific parameters to the Regional office on how the investigation was to be conducted.

While the Committee did not identify any breaches of the directives, we did become aware of concerns expressed by the Region to CSIS Headquarters that the parameters it was directed to follow tended to limit the stated objective of the targeting authority — to understand whether the subject was improperly using the position in the sensitive institution. CSIS Headquarters responded to the effect that the limitations would not impact on the value of the investigation and, in any case, were appropriate given the nature of the institution involved.

Explicit rules are in place which govern the Service's conduct of investigations dealing with members of sensitive social institutions

As we stated last year, the Committee strongly believes that CSIS needs to rigorously maintain precision in its affidavit drafting

The Committee concluded that the issue had been appropriately resolved.

Failure to Obtain an Authorization

The Committee identified one exception to the general conclusion that targeting decisions in the Region were authorized in accordance with the Service's internal rules and directives. Upon review of an investigation of a counter terrorism threat, the Committee found that contrary to Service policy, Regional investigators had failed to obtain a senior official's authorization before conducting interviews with a representative of a sensitive social institution. The Committee drew the attention of CSIS to the matter and we were subsequently informed that corrective action had been taken.

Obtaining and Implementing Federal Court Warrants

Under the *CSIS Act*, only the Federal Court can grant CSIS the right to use warrant powers, such as telephone or mail intercepts. In requesting such powers, the Service presents an affidavit attesting to their need to the Court. Every year, the Committee audits a number of affidavits by comparing them with the information in the Service's files. We have three related questions in mind:

- do the facts stated in the affidavit accurately reflect the information used to substantiate the affidavit;
- is the case presented to the Court in the affidavit set out in its proper context; and,

- are the facts and circumstances fully, fairly and objectively expressed in the affidavit.

Committee Findings

In 1996-97, the Committee reviewed two warrant affidavits in depth, both investigations falling under the direction of the Counter Terrorism Branch. Both affidavits were large, with one having over 200 references and supporting documentation filling seven three-inch, loose-leaf binders.

Warrant Preparation

In the two affidavits, we found several cases where CSIS omitted information that would have added context to its attestations. While the Committee is not able to set out details because of national security requirements, we can say that in some instances information that may have been relevant to certain statements of fact was missing. In some other cases, the statements in the affidavits proved to be a combination of factual information and the interpretations of CSIS experts. It is evident that the merging of fact and belief served to strengthen the Service's case. The Committee is of the view that any statement of belief in an affidavit should be clearly identified as such.

Proper affidavit preparation lies at the core of the entire targeting and investigatory process. As we stated last year, the Committee strongly believes that CSIS needs to rigorously maintain precision in its affidavit drafting. The Committee will continue to monitor the Service's procedures for writing affidavits in order to ensure that all legal requirements are scrupulously observed.

The Warrant Process

In order to obtain warrant powers under Section 21 of the *CSIS Act*, the Service prepares an application to the Federal Court with a sworn affidavit justifying the reasons why such powers are required to investigate a particular threat to the security of Canada. The preparation of the affidavit is a rigorous process involving extensive consultations with the Department of Justice, and the Solicitor General, with the latter's approval being required before a warrant affidavit is submitted to the Court. The facts used to support the affidavit are verified during the preparation stage and reviewed again by an "independent counsel" from the Department of Justice to ensure that the affidavits are legally and factually correct prior to the submission to the Federal Court. This process has evolved over the past several years with a view to ensuring that the facts, and statements of belief based on those facts, are accurate.

Warrant Tracking

The process by which CSIS tracks warrant applications is also of interest to the Committee. Normally, warrant applications and affidavits are assessed by an independent legal counsel from the Department of Justice prior to submission to the Federal Court. The Committee identified no anomalies in warrant tracking procedures.

Approval of Warrants

The law requires the approval of the Minister for all warrant applications. We noted that the Minister issued instructions to the Service to the effect that he is to be informed in advance whenever the Service proposes modifications to warrant applications that involve targets, warrant powers or any other substantive matter. The Minister stipulated that he is to be advised, preferably in writing, but verbally if the changes involve unacceptable delay.

During the coming year, the Committee intends to examine the use of warrants and warrant provisions.

[For more on the Service's handling of Federal Court warrants generally, and changes in warrant policies and procedures, please see page 46 of this report]

Quality Control in Reporting

Because intercept reports provide the basis for requests for warrant powers — and within CSIS, for targeting authorities — accurate reporting and transcription of material generated by warrant intercepts is vital. We found that the Region's past standard practice of ensuring quality control through a program of random testing had been interrupted for an extended period. We believe that this was the result of resource reductions in CSIS. The Service noted that the suspension of quality control procedures would be resumed at the earliest opportunity. The Committee will revisit CSIS quality control procedures during future regional audits.

Audit of Sensitive Operations

The very nature of sensitive operations dictates that they are the subject of relatively

In the cases the Committee reviewed, no unwarranted collection of information involving sensitive institutions was identified

frequent Ministerial consultations. In addition, policy for implementing sensitive operations is set out in some detail in the CSIS *Operational Policy Manual* and all requests for sensitive operations require at a minimum, depending on the level of sensitivity, the approval of Service senior management.

For the purposes of the audit, the Committee examined a set of randomly selected, human source investigations. In addition, we reviewed all requests from the Service for Ministerial approval and all requests to CSIS senior managers pertaining to operations involving “sensitive institutions” or any operations dealing with lawful advocacy, protest and dissent.

Committee Findings

Senior Management Approvals

In the cases the Committee reviewed, no unwarranted collection of information involving sensitive institutions was identified. All operations were appropriately authorized by senior management.

The Committee did review a case in which the Service took three years to proceed with an authorization. The source in question was involved with religious institutions, and while the Service had initially decided that an authorization was not required, we disagreed with this position and so informed the Service.

Ministerial Approvals

According to Ministerial Direction, any use of a source on a university campus must be approved by the Solicitor General. As we reported last year, new Ministerial

Direction on campus operations delegates authority to the Director of CSIS in “specified circumstances.” In the cases we examined, we were satisfied with the Service’s decisions to seek Ministerial authorization.

Administration of CSIS

Sensitive Operations

CSIS sensitive operations require centralized control and management. We found that in almost all the cases that we reviewed, the operations conformed to policy. One unusual case concerned payments to a source for a humanitarian purpose that were made in a way that did not strictly conform to current Service policies.

The Committee recommends that in future, any significant source payments that the Service makes outside established administrative procedures be authorized at CSIS Headquarters.

Sources in Conflict of Interest

CSIS senior management issued instructions in January 1996 on how to deal with sources whose efforts on behalf of CSIS might conflict with their employment responsibilities. The instruction outlined the steps to be taken to avoid such situations and how to respond when they did occur. The Committee’s audit showed, however, that this instruction had not been incorporated into more formal CSIS policy guidelines.

The Committee recommends that CSIS make the senior management instructions referred to above, part of operational policy on the management of human sources.

The Service has informed SIRC that it is in the process of incorporating the conflict of interest guidelines into its policy.

C. Inside CSIS

The third part of this section dealing directly with what CSIS does and how it does it, consists of the Committee's comments and findings on how the Service manages its own affairs and its relations with other agencies of Government and other national governments.

Statistics on Operational Activities

By law, the Committee is obliged to compile and analyze statistics on the operational activities of the Service. Annually, the Service provides the Committee with statistics in a number of areas: warrants, sensitive operations, finances, person-year usage and the like. We compare them against the data from previous years and question CSIS about any anomalies or new trends that we identify. The data can reveal significant areas of investigative activity, as well as suggest areas where the investigative effort is disproportionate to the threat under investigation.

Section 2(d) Investigations

The Minister must approve any investigation by CSIS under section 2(d) of the *CSIS Act*, often referred to the "subversion" clause.

The Minister authorized no such investigations in 1997-98.

Investigation Categories

Last year, the Committee noted that in the counter intelligence area, CSIS was using a system that effectively detracted from our ability to compile and analyze the necessary statistics. The system employed vague categories such as "political espionage" that did not describe the particular threat being investigated. While the Service continues to use these definitions, it has provided the Committee with detailed information aggregated by nation. Useful analysis is still very difficult, nevertheless, our researchers have managed to compile estimates and aggregate data which adequately describe the threats to Canada in the counter intelligence area.

Warrants and Warrant Statistics

Collecting and evaluating information on warrants is viewed by the Committee as an important task. Warrants are one of the most powerful and intrusive tools in the hands of any branch of the Government of Canada; for this reason alone their use bears continued scrutiny. In addition, the kinds of warrants granted and the nature of the targets listed provide insight into the entire breadth of CSIS investigative activities and are an important indicator of the Service's view of its priorities.

We compile statistics based on a quarterly review of all warrant affidavits and warrants granted by the Federal Court. Several kinds of information are tracked annually, such as the number of persons and number of locations subject to warrant powers. This format continues a practice established prior to the

The kinds of warrants granted and the nature of the targets listed provide insight into the entire breadth of CSIS investigative activities