

Section 3: CSIS Accountability Structure

The Service is an agency of the Government of Canada and as such, is accountable to Government, Parliament and the people of Canada. Because of the serious and potentially intrusive nature of CSIS activities, the mechanisms set out in law to give effect to that accountability are both rigorous and multi-dimensional; there are a number of independently managed systems inside and outside the Service for monitoring CSIS activities and ensuring that they accord with its mandate.

It is part of the Security Intelligence Review Committee's task (the Committee itself being part of the accountability structure) to assess and comment on the functioning of the systems that hold the Service responsible to government and Parliament.

A. Operation of CSIS Accountability Mechanisms

Ministerial Direction

The *CSIS Act* requires the Committee to review Direction provided by the Solicitor General to the Service under subsection 6(2) of the *Act*. Ministerial Directions govern CSIS investigations — for example, those conducted in potentially sensitive areas such as university campuses.

One of the Committee's major concerns is to identify the adequacy of Ministerial Direction or lack of compliance with

Direction that may lead to improper behavior or violations of the *CSIS Act*. Three areas specifically play a role in the Committee's analysis: an examination of instructions issued by the Service based on Ministerial Direction; a review of the manner in which Directions were implemented in specific cases; and the identification of significant changes in the numbers of operations that require Ministerial approval.

For 1997-98, we were advised of one new Ministerial Direction.

National Requirements for Security Intelligence 1997-98

National Requirements contain general direction from Cabinet as to where CSIS should focus its investigative efforts, as well as guidance on the Service's collection, analysis and advisory responsibilities. It appears that the Government has returned to a one-year National Requirements cycle instead of the two-year plan adopted in 1995. For 1997-98, the National Requirements set out the priorities for CSIS in five areas: counter terrorism, counter intelligence, security screening, foreign intelligence support, and reporting criminal activity. The new Ministerial Direction brings changes to a number of these areas.

In counter terrorism, the Minister added political violence arising from states that sponsor ethnic conflict in Canada to the list of potential threats to be addressed. With respect to reporting criminal activity, the Minister directed CSIS to enlarge the list of Canadian recipients of information it receives from foreign intelligence services about transnational criminal activity; this

There are a number of independently managed systems inside and outside the Service for monitoring CSIS activities

The important change to existing policy concerned a particular category of “sensitive institution”

information will now be available to other law enforcement agencies in addition to the RCMP. With impact across the range of Service activities, the change in instructions also adds certain kinds of domestic investigations to the list of those not requiring Ministerial approval, while at the same time, broadens the Service’s requirement to report to the Minister on any investigation where there is a well-founded risk of serious violence.

The most recent National Requirements contain two elements not seen in previous versions. For the first time, the National Requirements employed the phrase “Canadian interests,” in addition to the usual “threats to the security of Canada.” We questioned the Service on whether it took this change in wording as an expansion of its mandate and an enlargement of the scope of its investigations. The Service stated in response that it regarded the phrases as synonymous, and that in any event its actions were governed by the *CSIS Act* and Service policies. The Committee intends to monitor the Service’s actions with respect to this innovation in language.

In addition, the Committee noted references to specific targets. Our interest was in knowing whether such Direction would influence the Service’s targeting decisions. In response to our queries, the Service stated that it regards the National Requirements as a general guide, but that it is the Target Approval and Review Committee (TARC) that has the responsibility to review and approve applications to conduct investigations. [for a discussion of TARC, see inset

page 39]. Once again, the Committee will monitor Service targeting decisions with the new Direction in mind.

Changes in Service Operational Policies and Instructions to Officers

Derived in part from the Service’s interpretation of Ministerial Direction, the *CSIS Operational Policy Manual* is intended as a guide and operational framework for CSIS officers and employees. The Committee examines changes to the *Operational Policy Manual* as if they were changes to Ministerial Direction, and regards the manual as a useful tool in assisting our reviews of CSIS investigations. Operational policies, some of which are sensitive and potentially intrusive, must comply with Ministerial Direction, the *CSIS Act*, the *Canadian Human Rights Act*, and other relevant legislation.

In the fiscal year 1997-98, the Service produced one new policy instruction and made significant amendments to an existing policy.

Countering Technical Intrusions into CSIS Operations

The new policy instruction outlines the responsibilities and mechanisms governing “counter technical intrusion inspections” in support of the Service’s operational activities. The object of the policy is to protect certain areas used for the Service’s operational activities from technical intrusion.

Investigations at Post-secondary Institutions

The important change to existing policy concerned a particular category of “sensitive institution.” In order to bring operational

policies into line with the Ministerial Direction entitled “Conduct of Security Investigations at Post-Secondary Institutions,” issued early in 1997, the Service amended its policies on campus operations. The amendments are reflected in human source operations, immigration and citizenship screening investigations, and government security screenings.

Disclosure of Information in the Public and in the National Interest

In the Public Interest

Section 19 of the *CSIS Act* prohibits the Service from disclosing information except in specific circumstances. Under one circumstance, explicitly referred to in the *Act*, the Minister can authorize the Service to disclose information in the “public interest.” The *Act* compels the Director of CSIS to submit a report to the Committee regarding all “public interest” disclosures. There were none in 1997-98.

In the National Interest

Under the Service’s interpretation of its mandate, it holds that acting as the Minister’s agent, CSIS can also make special disclosures of information in the “national interest.” In such circumstances, the Solicitor General would determine whether the disclosure of operational information was in fact in the national interest, whereupon he would direct CSIS to release the information to persons or agencies outside government. CSIS policy stipulates that the Committee be informed whenever such disclosures take place. There were none in 1997-98.

Governor in Council Regulations and Appointments

Under section 8(4) of the *CSIS Act*, the Governor in Council may make regulations concerning the power of the Director of CSIS, appointments and other personnel matters. No such regulations were issued in 1997-98.

Annual Report of the Director of CSIS

The CSIS Director’s Annual Report to the Solicitor General comments on the Service’s operational activities for the preceding fiscal year. To late August 1998, we had not received the Director’s report for 1997-98. We therefore cannot comment on it here.

Certificates of the Inspector General

The Inspector General of CSIS reports to the Solicitor General and functions effectively as his internal auditor of CSIS, reviewing the operational activities of the Service and monitoring compliance with its policies. Every year the Inspector General must submit to the Minister a Certificate stating the “extent to which [he or she] is satisfied,” with the Director’s report on the operational activities of the Service and informing the Minister of any instances of CSIS having failed to comply with the *Act* or Ministerial Direction, or that involved an unreasonable or unnecessary exercise of powers. The Minister sends a copy of the Certificate to the Security Intelligence Review Committee.

The Committee received the Inspector General’s Certificate covering fiscal year 1995-96 in December 1997, and his certificate for fiscal year 1996-97 in July 1998.

Under one circumstance, explicitly referred to in the *Act*, the Minister can authorize the Service to disclose information in the “public interest”

The Inspector General expressed concerns about the factual basis for some statements in the report

During this period, the Committee also received copies of three special reports the Inspector General provided to the Minister.

1995-1996 Certificate

The Inspector General commented that he was satisfied that the Director's Annual Report for fiscal 1995-96 was a reasonable reflection of the nature and scope of CSIS operational activities for the year. While he noted that a number of statements in the report were, in his view, exaggerations and did not accurately reflect the file material that he examined, the discrepancies would not have seriously misled the Solicitor General in understanding the subjects discussed. The Inspector General repeated concerns expressed in a previous certificate, about the brevity of reporting in annual reports on activities conducted under sections 16 and 17 of the *Act*.

1996-1997 Certificate

With respect to the report of the Director of CSIS for 1996-97, the Inspector General expressed concerns about the factual basis for some statements in the report, but noted that the Director had taken greater care in providing the Solicitor General with a clear description of CSIS activities during the year. He repeated his concerns about limited reporting on activities conducted on section 16 and 17 of the *CSIS Act*. He found the report to be a reasonable reflection of the nature and scope of CSIS's activities for the year.

As required by the *CSIS Act*, these two certificates also make a number of important recommendations concerning the Service's compliance with the *Act* and Ministerial

Direction. These recommendations focused on specific investigations and CSIS practice in the following areas: targeting, the use of informants, information retention, disclosure of information and CSIS' cooperation with other agencies. In view of the complexity of these issues, we will comment on them in our next annual report.

Unlawful Conduct

Under section 20(2) of the *CSIS Act*, the Director of CSIS is to submit a report to the Minister when, in his opinion, a CSIS employee has acted unlawfully in the performance of his or her duties and functions. The Minister, in turn, must send the report with his comments to the Attorney General of Canada and to the Committee.

In 1997-98, we received one report of possible unlawful conduct by an employee of CSIS. However, because the case is presently under criminal investigation, and no final actions have been taken, we are unable to comment on the report.

To date, the Service has made 14 reports to the Minister concerning unlawful conduct under section 20(2) of the *Act*. In addition to the new instance noted above, two others dating back to 1989 and 1990 remain unresolved. Following inquiries from the Committee, the Service has assured us that in concert with the other agencies of Government with jurisdiction in the matter, it has taken the appropriate steps to resolve both cases.

SIRC Consultations and Inquiries

As noted earlier, the Committee is a key part of the CSIS accountability structure.

In 1997-98 we undertook specific activities in this respect in the following areas:

Tracking and Timing of Formal Inquiries

In 1997, we augmented the system used to track the inquiries we make of CSIS and the length of time the Service takes to reply. Written questions to the Service include a due date giving it a reasonable amount of time to respond. For tracking purposes, the “clock” starts ticking the day after the due date, with end of fiscal year calculations being based on the average number of days that the Service exceeds the grace period. In fiscal year 1997-98, we directed 142 formal questions to the Service; the average response time was 39 days following the sending of the request.

In addition to formal questions, the Committee may make informal requests of CSIS. In all such cases for the year under review, the Service responded expeditiously to what were sometimes urgent queries.

Briefings

In the course of their regular audit functions, the Review Committee’s research staff have daily contact with CSIS personnel. As well, the Service arranges special briefings for Committee Members or staff at our request or on the recommendation of the Service with the topics ranging from new developments in technology to investigations of special interest.

At its monthly meetings, the Chair and Committee Members meet with other government officials to keep open the lines of communication and stay abreast of new developments. The Committee met with the

Director of CSIS in August 1997 and March 1998. When meetings of the Review Committee are held outside of Ottawa, Members visit CSIS Regional Offices. The Committee met with senior CSIS Regional Managers in Québec City in May 1997, in Vancouver in April 1998, and in Toronto in June 1998. The balance of the monthly meetings were held in Ottawa.

SIRC Activities Additional to CSIS Review

The Committee met with the Solicitor General and the Deputy Solicitor General in September 1997, and two senior officials from the Office of the Inspector General of CSIS in October 1997.

The Chair and the Executive Director attended a conference for Intelligence Review Agencies held in Canberra, Australia in November 1997.

During the course of 1997-98 Committee Members met a number of visiting scholars and officials, among them were:

- the Director General and two senior officials of the Australian Security Intelligence Organization (ASIO) (September 1997);
- the United Kingdom’s Intelligence and Security Committee (March 1998);
- the British Columbia Civil Liberties Association in Vancouver (April 1998);
- in May 1997, the Committee’s Director of Research met with five members of Germany’s Bundestag; and,
- a Professor from the University of London, UK, to discuss public management of the security and intelligence sector (May 1997).

We augmented the system used to track the inquiries we make of CSIS and the length of time the Service takes to reply

The Committee's Counsel and Senior Complaints Officer attended meetings in the Middle East in January 1998, as part of a Committee review of the CSIS Immigration Screening Program.

Special Reports

Under section 54 of the *CSIS Act*, the Committee can issue special reports to the Solicitor General on any matter relating to the performance and functions of the Service. In 1997-98, we submitted no studies of this kind to the Minister. [A list of all SIRC studies to date can be found in Appendix B of this report.]

B. Inside the Security Intelligence Review Committee

On 30 April 1998, the Prime Minister of Canada announced the appointment of the Honourable Bob Rae, P.C., Q.C. to SIRC.

The Honourable Edwin Goodman, P.C., O.C., Q.C., the Honourable Georges Vari, P.C., O.C., C.L.H., and the Honourable Rosemary Brown, P.C., O.C., O.B.C. marked the end of their five-year mandates with the Committee. We are grateful for the time and dedication that these members contributed during their tenure at SIRC.

Accounting to Parliament

During 1997-98, the Review Committee Chair met with several Members of Parliament to exchange views on how SIRC could assist Members of the Standing Committee on Justice and Human Rights to fulfill their responsibilities. We appeared before the Sub-Committee on National Security on 15 April 1997 and before the full Standing Committee on 14 May 1998 to respond to questions about the Main Estimates. In her opening comments, the Committee Chair, the Honourable Paule Gauthier, P.C., O.C., Q.C. reviewed the

Table 3
SIRC Budget 1997-98

	1997-98	1996-97
Personnel	831,000	805,000
Goods and Services	575,000	598,000
Total Operating Expenses	1,406,000	1,403,000

Source: 1997-98 Estimates. Part III, Section II.

Committee's key plans and strategies for the following year, and identified the external factors that influence the Committee's operations and budget. In closing, Paule Gauthier invited suggestions or constructive criticism on ways in which the Review Committee could better perform its duties.

Staying in Touch with Canadians

Symposia

Research Staff participated in the conference and annual general meeting of the Canadian Association for Security and Intelligence Studies (CASIS), held in Ottawa in June 1998.

SIRC on the Internet

Since its debut on the Internet in October 1996, the SIRC website (www.sirc-csars.gc.ca) has received more than 279,000 visits. We plan to improve our web site so that it better reflects the Review Committee's ongoing work, while at the same time making it a more useful research tool for our clients.

All SIRC annual reports — dating back to 1984-85 when the Committee was established — are now accessible through the web site. The list of Committee studies has been updated and we have added hot links to other web sites of interest. The site also provides readers with information about procedures for filing complaints about CSIS activities and the denial of security clearances, as set out in sections 41 and 42 of the *CSIS Act*.

Impact of Budget Reductions

Government-wide budget reductions continue to have an impact on the Committee's research functions. Until last year, the

Committee allotted its research resources between two teams: one reviewed counter intelligence operations while the other was devoted to examining the counter terrorism side of CSIS work. The Committee has since integrated research resources so as to increase its effectiveness in reviewing the activities of CSIS.

In last year's report, we stated that the Review Committee would be doing more work "in house", using outside lawyers less, and employing fewer contract researchers. We are satisfied with this redeployment of resources and, with respect to the complaints function, are confident that our staff Legal Counsel has developed an expertise in most of the relevant areas beyond that which we could find elsewhere.

The investigation of complaints and ministerial reports is the most costly area of discretionary spending for the Committee. Small changes in their numbers can significantly affect the Committee's budget and operations. They consume a lot of staff time, require the purchasing of expensive legal services, and their very nature makes it difficult to predict how many there will be or their complexity. As a result of a 1993 amendment to the *Immigration Act*,³⁷ however, the Committee is anticipating an increase in the number of ministerial reports the Committee will be required to handle.

In the area of information technology, the Committee has ensured that its information systems are "year 2000" compliant, and has engaged outside specialists in this regard. As a matter of policy, the Committee will continue to stay abreast of innovations in

The Committee is anticipating an increase in the number of ministerial reports the Committee will be required to handle

information technology so as to continue the steady increase in productivity seen over the last five years.

Personnel

The Committee currently has a small total staff of 14: an executive director, a counsel/senior complaints officer to handle complaints and ministerial reports, a deputy executive director, a director of research, a project leader and five research officers (one of whom is responsible for liaison with the media), an administrative officer who is also the Committee registrar for hearings, and an administrative support staff of three to handle sensitive and highly-classified material using special security procedures.

The Committee has recently seen some major staff changes with the departure of six long-time employees who retired or obtained new posts in government. To all

we express our sincere gratitude for their hard work, loyalty, and dedication to SIRC. We are pleased to welcome the new employees to fill the vacancies in our research and administrative divisions.

At its monthly meetings, the members of the Committee decide formally on the research and other activities they wish to pursue, and set priorities for the staff. Management of day-to-day operations is delegated to the Executive Director with direction when necessary from the Chair in her role as the Chief Executive Officer of the organization.

