



**SECURITY INTELLIGENCE
REVIEW COMMITTEE**

SIRC Annual Report 1998-1999

**An Operational Audit of the
Canadian Security Intelligence Service**

Canada

Security Intelligence Review Committee
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Collect calls are accepted, and the switchboard is open
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The Honourable Lawrence MacCaulay, P.C., M.P.
Solicitor General of Canada
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Ottawa, Ontario
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30 September 1999

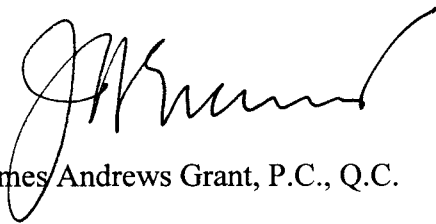
Dear Mr. MacCaulay:

As required by section 53 of the *Canadian Security Intelligence Service Act*, we transmit to you the Annual Report of the Security Intelligence Review Committee for the fiscal year 1998-99, for your submission to Parliament.

Yours sincerely,



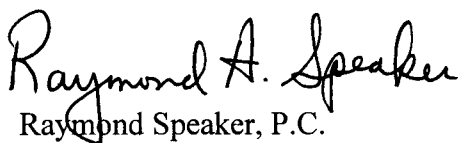
Paule Gauthier, P.C., O.C., Q.C.
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Raymond Speaker, P.C.



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Statement from the Committee

Canada's Security Intelligence System – Life at Fifteen

In strictly legal terms, the Security Intelligence Review Committee (SIRC) was born in July 1984 when the legislation creating it took effect. However, its true genesis was in the tumultuous political and social events of the late 1960s and 1970s which gave rise to a Commission of Inquiry headed by Justice D.C. McDonald, and a report with the deceptively innocuous title, “Commission of Inquiry Concerning Certain Activities of the RCMP.”

Justice McDonald subjected the country's security intelligence apparatus to almost four years of intense scrutiny and he found it wanting. By the time the Commission had finished its work in 1981, Canadians knew two important things most did not know before: that the Royal Canadian Mounted Police in its security intelligence function had routinely committed improprieties and illegal acts against Canadians, and that the security intelligence system of the day was so flawed that it needed to be rebuilt essentially from scratch.

The RCMP Security Service should be disbanded, McDonald concluded, and a new separate, civilian organization put in its place to ensure that security intelligence activities were effective, and at the same time carried out in accordance with the rule of law and accountable to government. After much spirited public discussion the

legislation to create the new agency (the Canadian Security Intelligence Service) and the mechanisms for monitoring its activities (this Committee chief among them) was enacted in 1984.

In a Turbulent World, 15 Years Is a Long Time

Fifteen years is sufficient time to draw some fairly reliable conclusions about the 1984 “revolution” in Canadian security intelligence affairs. At the outset it is important to state that in meeting the goals set by Justice McDonald to create an agency able to “perform effectively in a lawful and proper manner,” the *CSIS Act* and its associated legislative reforms have proven to be remarkably successful. CSIS does its job of identifying threats to Canada and advising the Government about them; SIRC and other responsible bodies including the Inspector General and the relevant committees of Parliament, review the Service's work to help ensure it is effective and that it conforms to the law.

The Members of this Committee would be remiss, however, if we failed to examine and comment on the larger picture beyond our day-to-day reviews of the Service's activities; in this, our view is less sanguine. The plain fact is that some twenty years after Justice McDonald laid out the broad principles for Canada's security intelligence

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system there is a growing incongruity between the world for which the existing set of laws and practices were designed almost two decades ago, and the world as it is in 1999.

It is useful to recall that the legislation governing security intelligence in Canada emerged at the height of the Cold War and the depths of the 1980s recession. In 1984 a person by the name of Konstantin Ustinovich Chernenko was head of the Soviet Communist Party, Vaclav Havel had just been released from the first of two terms in a Czechoslovak prison, and few people could tell you what Chechnya was let alone find it on a map.

This is not to suggest that the obvious changes in the world require wholesale revamping of the legislative and administrative apparatus. Indeed, the *CSIS Act* has proved to be quite a flexible instrument for managing intelligence activities in rapidly evolving circumstances. Nevertheless, the number of areas where current policy is either inadequate to the task or altogether silent is significant.

Who's Minding the Store?

Two areas loom as especially problematic. The first concerns security intelligence activities of the Government not covered in existing legislation. The best known is the Communications Security Establishment (CSE). An agency of the Department of National Defence, CSE provides government with foreign signals intelligence in support of Canadian foreign and defence policies. In 1996, the Government for the first time appointed a commissioner to review CSE activities for compliance with the law, and every indication is that Commissioner Claude Bisson is doing commendable work.

Nevertheless, his position is not mandated by any legislation and the office exists at the discretion of the government of the day under the direction of the Minister of National Defence.

Security intelligence activities are on the increase in other parts of the government, in large measure because of the evolving nature of international threats to Canadians. The Departments of Foreign Affairs and International Trade, National Defence, and Citizenship and Immigration Canada are the most active, though there are others as well. None of them, however, are subject to the kind of regulation, direction, and review which currently governs CSIS operations; a state of affairs we believe is not sustainable over the long term.

A key implication of the McDonald Commission's work was that it linked the effectiveness of security intelligence to public accountability. Canadians decided twenty years ago that they would not tolerate a security intelligence agency, irrespective of its goals or achievements, that did not act within the law and in accordance with widely accepted principles of democracy and governmental responsibility. Public confidence that this continues to be the case can only be undermined if it becomes apparent that certain parts of the increasingly varied ensemble of activities called "security intelligence" are arbitrarily subject to less stringent review—or no review at all—than others. In this regard, the recently published report of the Senate Special Committee on Security and Intelligence chaired by Senator William Kelly is an important contribution.¹

Setting National Priorities for Security Intelligence

The second major impact of the sea change in international affairs is the greatly increased threat posed by transnational crime and economic espionage. The Service and other parts of government are responding to these threats and directing increasing resources to counter them. However, a significant challenge to responsible control and review of these activities lies in the current rather oblique language used to describe the threats and decide which parts of government are to deal with them.

The Committee has in the recent past noted instances where the Service has drawn the definition of “economic security” far too broadly for certain activities to be legitimately included within its existing mandate. And as we note in this year’s report, an effective division of labour between CSIS and the RCMP with respect to threats from transnational crime has yet to be realized.

Future effectiveness in dealing with new threats, as well as the capacity to ensure that intelligence activities directed at them are lawful and appropriate, rests in large measure on how the current ambiguities are resolved.

A Comprehensive Review

Canada’s history in the field of security intelligence (not to mention sound public policy making) teaches us that it is foresight and opportunity, not crisis and scandal, which should be the spurs to building upon the achievements of recent years.

The current security intelligence apparatus was designed twenty years ago, and last

examined as a whole in 1990. The Members of SIRC believe that it is time for a thorough Government-wide review of all of the nation’s intelligence systems and organizations. The mechanisms of such a comprehensive examination are for Government to choose, however, we would urge that the review be as open as law and prudence permit, and that all interested parties, individuals, and groups, be encouraged to participate. This Committee would welcome the opportunity to work within any processes that might be undertaken, including any of the appropriate committees of Parliament.

In any democratic society security intelligence activities are among the most serious a government can undertake. They warrant the constant and meticulous attention of all who cherish democratic values and civil discourse in a turbulent and dangerous world.

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How SIRC's Annual Audit Report is Organized

This year's audit report maintains the organization and format instituted in 1996-97. Comments and feedback Committee Members and staff received during the year seemed to bear out our hope that the revised format would be both more functional and more informative.

In general, the report is organized to reflect the Committee's primary functions: first, to review CSIS intelligence activities, second, to investigate complaints about CSIS and associated matters, and third, to act in concert with other parts of the governance system to protect Canadians from threats to their security.

- Section 1 presents the Committee's review and audit of what the Service does and how it does it. The sub-sections represent the different methods the Committee employs to make these assessments.
- Section 2 deals with the Committee's role as a quasi-judicial tribunal with the power to investigate complaints of various kinds.
- Section 3 brings together under one heading—CSIS Accountability Structure—the Committee's review of the multiple administrative and legal mechanisms that hold the Service accountable to Government, Parliament, and the people of Canada.

As before, the report draws a clear distinction between Committee comments, observations and recommendations bearing directly on our major task—reviewing CSIS and associated activities for a certain period of time—and the more general background material we are making available with the aim of assisting Canadians and other readers to understand the context in which security and intelligence work is carried on.

Subjects the Committee believes will be of historical, background or technical interest to readers are set apart from the main text in shaded insets. Unlike the main body of the report, they do not reflect Committee opinion or conclusions as such and are intended to be factual in nature.

A minor but, we believe, important innovation is that where appropriate, each section of the audit report is labelled with the SIRC study from which it is abstracted. The full references are found in Appendix B.