Section 2: Investigation of Complaints

Quite distinct from its function to audit and review the Service's intelligence activities, SIRC's second primary role is to investigate complaints from the public about any CSIS action. There are three discrete areas within the Committee's purview:[33]

- The Committee is constituted as a quasi-judicial tribunal to consider and report on any matter having to do with federal security clearances, including complaints about denials of clearances to government employees or contractors.
- The Committee investigates reports made by Ministers about persons in relation to citizenship and immigration, certain human rights matters, and organized crime.
- As set out in the *CSIS Act*, any person may lodge a complaint with the Review Committee, "with respect to any act or thing done by the Service."

Section A below sets out the Committee's analysis of the numbers and types of complaints received during the 1996-97 fiscal year.

Section B reviews CSIS' role in conducting security screenings and assessments on behalf of the government.

A. 1996-97 Complaints About CSIS Activities

Statistics

During the 1996-97 fiscal year, we received thirty-three new complaints under section 41 of the *CSIS Act* ("any act or thing") and

SIRC's Role Regarding Complaints About CSIS Activities

The Review Committee, under the provisions of section 41 of the *CSIS Act*, must investigate complaints made by "any person" with respect to "any act or thing done by the Service." Before the Committee investigates, however, two conditions must be met:

- the complainant must have first complained to the Director of CSIS, and have not received a response within a period of time that the Committee considers reasonable, (approximately thirty days) or the complainant must be dissatisfied with the Director's response; and
- the Committee must be satisfied that the complaint is not trivial, frivolous, vexatious or made in bad faith.

Furthermore, under subsection 41(2), the Committee cannot investigate a complaint that can be channelled through another grievance procedure under the *CSIS Act* or the *Public Service Staff Relations Act*. These conditions do not diminish the Committee's ability to investigate cases and make findings and recommendations where individuals feel that they have not had their complaints answered satisfactorily by CSIS.

33. The *CSIS Act* stipulates that SIRC conduct investigations pursuant to complaints made to the Committee under sections 41 and 42. The *Act* also states that SIRC can conduct investigations in regard to reports or matters referred to the Committee pursuant to section 17.1 of the *Citizenship Act*, sections 39 and 82.1 of the *Immigration Act* and Section 36.1 of the *Canadian Human Rights Act*.

Table 3
Complaints (1 April 1996 to 31 March 1997)

	New Complaints	Carried Over from 1995-96	Closed in 1996-97	Carried to 1997-98
CSIS Activities	33	4	36	1
Security Clearances	1	0	1	0
Immigration	1	0	0	1
Citizenship	1	0	0	1
Human Rights	0	0	0	0

one under section 42 (denial of security clearance). In addition, the Committee received two ministerial reports — one pertaining to the *Citizenship Act*, the other to the *Immigration Act*.

Findings on 1996-97 complaints "with respect to any act or thing"

During fiscal year 1996-97, we received five complaints from persons who asserted that the Service had subjected them to surveillance, kidnapped them, censored their mail or telephone service, or medically implanted devices in them.

In response to complaints, the Committee as a general rule neither confirms nor denies that the person complaining is a target. The Committee thoroughly investigates the complainant's assertions in order to ensure that the Service has not used its powers unreasonably. If we find that the Service has performed its duties and functions efficiently and properly, we then convey that assurance to the complainant. The Committee found nothing unreasonable about CSIS activities in relation to these five cases and that assurance was conveyed to the complainants.

Ten complaints were received about which the Committee took no action, apart from advising the complainants that in failing first to take the complaint to the Service directly, they had not met the requirements necessary for SIRC to investigate further. Six other complainants were informed that the Committee did not have jurisdiction to investigate their particular cases.

For the second consecutive year, we received nine complaints with respect to the Service's activities in providing security assessments and/or advice to the Minister of Citizenship and Immigration Canada. In four cases, the Committee was able to confirm that the Service had concluded its enquiries and had forwarded, or was about to forward, its recommendations to Citizenship and Immigration Canada (CIC). In two other complaints, the Committee ruled that the complexity of the cases justified the time taken by CSIS to process the assessments.

If we find that the Service has performed its duties and functions efficiently and properly, we then convey that assurance to the complainant

The Evolution of the Security Clearance Complaints Procedure

The Committee has been constituted as a complaint tribunal to consider and report on any matter having to do with federal security clearances. Under section 42 of the *CSIS Act*, a complaint can be made to the Committee by:

- a person refused federal employment because a security clearance has been denied;
- a federal employee who is dismissed, demoted or transferred, or denied a promotion or transfer for the same reason; and
- anyone refused a contract to supply goods and services to the government for the same reason.

This quasi-judicial role as a complaint tribunal is of immediate interest to individuals who have their security clearances denied and are adversely affected in their employment with the Federal Government as a result. Of course, an individual cannot complain about the denial of a security clearance unless such a decision has been made known. In the past, there was often no requirement that the individual be so informed. The *Act* remedies this by requiring deputy heads or the Minister to inform the persons concerned.

Until the *CSIS Act* was promulgated, not only were many individuals unaware that they had been denied a security clearance, but even those who were informed were often not told why their applications had been denied. Now, the law requires the Committee to give each individual who registers a complaint as much information about the circumstances giving rise to the denial of a security clearance as is consistent with the requirements of national security. The Committee must then examine all facts pertinent to the case, make a judgement as to the validity of the decision taken by the deputy head, and then make its recommendations to the Minister and the deputy head concerned.

In another two cases, the Committee found that the delays took place in departments other than the Service, and where the Committee has no jurisdiction. In respect of the final complaint, we informed the complainant of the requirement to first submit his complaint to the Director of the Service. At the time of publication of this report, the complainant had written to the Director. He was dissatisfied with the Service's response and had again filed with the Committee.

Findings on 1996-97 security clearance complaints

The single complaint received by the Committee regarding security clearances was directed at a department that performs its own security screening investigations. The Committee was informed by the department concerned that it had not in fact revoked or suspended the security clearance of the complainant, and we were assured that the complainant continued to hold a valid security clearance. Given the fact that the investigating agency was other than the Service, additional inquiries were beyond the Committee's jurisdiction.

Changes to Procedures in Respect of the Governor in Council

When the Committee receives a Ministerial Report, it investigates the grounds on which the report is based, then submits a full report to the Governor in Council.

In the case of an application for citizenship, the Governor in Council may issue a declaration to prevent the approval of any citizenship application for a two-year period. In regards to immigration applications, the Governor in Council may direct the Minister of Citizenship and Immigration Canada to issue a security certificate against a person and to proceed with the deportation of that individual.

During fiscal year 1996-97, the Minister of Citizenship and Immigration Canada introduced Bill C-84 in Parliament to amend the *Citizenship Act* and the *Immigration Act*. The amendments allow the Governor in Council to appoint a judge to replace the Committee, in the event that we are of the opinion that we cannot fulfill our mandate. The Bill contains an interim provision to cover court decisions that were rendered before the Bill came into effect.

Findings on 1996-97 Ministerial reports[34]

Citizenship refusals

In our annual report last year, the Committee stated that it had received one Ministerial report pursuant to this section. At that time, SIRC's jurisdiction to investigate the matter was successfully challenged in the Federal Court, where it was held that there was a reasonable apprehension that the Committee would be biased in its investigation of the Ministerial report concerning the citizenship application of Mr. Ernst Zündel.[35] The Government launched an appeal to the Federal Court.

Deportation orders [36]

The Committee received no Ministerial Reports of this type during 1996-97.

Persons appearing before the Immigration Appeal Division [37]

During 1996-97 the Committee received one such report. In this case, the Immigration Appeal Division is unable to begin its review until the Governor in Council has made a decision on the Committee's report.

The Committee will be revisiting a case first heard by our late Chairman. He had determined that the subject of the complaint came within the class of persons described within paragraph 19(1)(g) of the *Immigration Act* as "persons who there are reasonable grounds to believe...are members of...an organization that is likely to engage in...acts of violence" that would or might endanger the lives or safety of persons in Canada, and thus are not admissible to Canada.

34. The Minister of Citizenship and Immigration Canada may make a report to the Committee when the Minister is of the opinion that a person should not be granted citizenship because there are reasonable grounds to believe that the person will engage in an activity that constitutes a threat to the security of Canada, or that the person's activity is part of a pattern of criminal activity punishable by way of indictment. See the *Citizenship Act* (section 19.1 onward).

35. Zündel v. Minister of Citizenship and Immigration Canada, Federal Court of Canada, Decision of Mr. Justice Heald, 1 August 1996.

36. A joint report signed by the Minister of Citizenship and Immigration Canada and the Solicitor General may be issued to the Committee when both Ministers are of the opinion, based on security or criminal intelligence reports received and considered by them, that a permanent resident is a person described in the inadmissible classes of the Immigration Act. See the *Immigration Act* (section 39 onward).

37. A report signed by the Minister of Citizenship and Immigration Canada and the Solicitor General may be issued to the Committee when both Ministers are of the opinion, based on security or criminal intelligence reports received and considered by them, that a person who has lodged an appeal (against a deportation order) before the Appeal Division is a permanent resident described in the inadmissible classes of the *Immigration Act*. See *Immigration Act* [section 81(1) onward].

The most frequently requested security checks cover the person's life for a period of ten years prior to the application

The Federal Court of Canada subsequently ruled, however, that a portion of this same paragraph 19(1)(g) contravened the freedom of association assured by paragraph 2(d) of the *Charter of Rights and Freedoms* in a manner that is not demonstrably justified in a free and democratic society.

The Committee has subsequently been asked to determine whether the subject of the report, a permanent resident of Canada, is a person described in paragraphs 19(1)(e), 19(1)(g), and 27(1)(c) of the *Immigration Act* as they existed on 29 May 1992, and that portion of paragraph 19(1)(g) of the *Immigration Act* that remains in force and was not disputed by the Federal Court judgement.

A member of the Review Committee will re-examine the matter during the course of 1997-98.

Canadian Human Rights Commission referrals [38]

The Committee received no referrals of this type for the year under review.

B. Security Screening Procedures within the Government of Canada

CSIS' role in security assessments

Pursuant to section 15 of the *CSIS Act*, the Service may conduct investigations in order to provide security assessments to:

- departments and agencies of the Federal Government (section 13 of the *Act*);
- the government of a foreign state (section 13 of the *Act*); and
- the Minister of Citizenship and Immigration Canada respecting citizenship and immigration matters (section 14 of the *Act*).

The Service conducts security screening investigations and provides security assessments for employees of the Public Service, as well as persons in the private sector who receive government contracts that involve classified work.[39]

The requirements of a security assessment can vary, depending on the clearance level requested (confidential, secret, top secret). The most frequently requested security checks cover the person's life for a period of ten years prior to the application (five years in the case of access to secure government premises) or back to age sixteen, whichever comes first.

While it is the departments concerned that conduct initial criminal and credit checks, the Service cross-checks its own data base and conducts field investigations required (and interviews if necessary) for Level 3 clearances or "for cause."

38. When, at any stage after the filing of a complaint, and prior to the commencement of a hearing before a Human Rights Tribunal, the Commission receives written notice from a Minister of the Crown that the practice to which the complaint relates was based on considerations relating to the security of Canada, the Commission may refer the matter to the Review Committee. See section 45 (2) of the *Canadian Human Rights Act*.

39. The two exceptions are the employees of the Department of National Defence (DND) and the Royal Canadian Mounted Police (RCMP) which conduct their own field investigations for employees requiring security clearances.

Security Screening in the Government of Canada

The Government Security Policy (GSP)[40] stipulates two types of personnel screening: a reliability assessment and a security assessment. Reliability checks and security assessments are conditions of employment under the *Public Service Employment Act* (PSEA).

Basic Reliability Status

Every department and agency of the Federal Government has the responsibility to decide the type of personnel screening it requires. These decisions are based on the sensitivity of the information and the nature of the assets to which access is sought. Reliability screening at the “minimum” level is required for those persons who are appointed or assigned to a position for six months or more in the Public Service, or for those persons who are under contract with the Federal Government for more than six months, and who have regular access to government premises. Those persons who are granted reliability status at the basic level are permitted access to only non-sensitive information (information which is not classified or designated).

Enhanced Reliability Status

Enhanced Reliability Status is required when the duties of a Federal Government position or contract require the person to have access to classified information or government assets, regardless of the duration of the assignment. Persons granted enhanced reliability status can access the designated information and assets on a “need-to-know” basis.

The Federal departments and agencies are responsible for determining what checks are sufficient in regard to personal data, educational and professional qualifications, and employment history. Departments can also decide to conduct a criminal records name check (CRNC).

When conducting the reliability assessments, the Federal Government organizations are expected to make fair and objective evaluations that respect the rights of the individual. The GSP specifies that “individuals must be given an opportunity to explain adverse information before a decision is reached. Unless the information is exemptible under the *Privacy Act*, individuals must be given the reasons why they have been denied reliability status.”

Security Assessments

The *CSIS Act* defines a security assessment as an appraisal of a person’s loyalty to Canada and, so far as it relates thereto, the reliability of that individual. A “basic” or “enhanced” reliability status must be authorized by the government department or agency prior to requesting a security assessment.[41] Even if a person has been administratively granted the reliability status, that individual must not be appointed to a position that requires access to classified information and assets, until the security clearance has been completed.

40. Treasury Board of Canada, *Security Manual, Government Security Policy*, Chapter 2-4, "Personnel Security Standard."

41. For contracts, the requirement to grant a basic or enhanced reliability check prior to requesting a security assessment does not apply.

Statistics

In fiscal year 1996-97, the Service completed 1,135 field investigations and subject interviews. The Service's average response times to process security clearances during 1996-97 were 14, 23, and 101[42] days respectively, for Government Security Policy levels I, II, III.[43]

While the Service does not make security assessment recommendations for DND and the RCMP, on request it can conduct checks of its indices on behalf of the two agencies in order to assist in their security clearance investigations. Also at the request of DND and RCMP, the Service can seek the assistance of foreign agencies.

Committee findings

Rising numbers of security screening requests

The Committee notes with some surprise that despite government downsizing, the number of government security screening requests has increased in each of the last three years: 51,209 in 1994-95, 56,886 in 1995-96, and 63,605 for fiscal year 1996-97. While some of these requests were to update[44] or upgrade[45] existing security clearances, 35,440 were new applications. In contrast, the number of requests to downgrade clearances was minimal (68) for the same year.

Because of the manner in which the Service retains information about the subjects of the requests, the breakdown in new requests between "indeterminate employees" and "contract employees" is unknown. There were 28,319 requests for access to government sites.

For the majority of requests, the Service's security assessment takes the form of a simple notice of assessment to departments. In fiscal year 1996-97, CSIS issued 63,594 notices.

Right of redress and right of review

. . .one of the key innovations of the *CSIS Act* was to require that the person subject to the request be informed should the application for clearance be denied

As noted earlier in the description of the procedures in place for handling security clearance complaints (see inset page 44) one of the key innovations of the *CSIS Act* was to require that the person subject to the request be informed should the application for clearance be denied. The Committee continues to monitor the redress and review procedures.

Government employees[46] who wish to challenge a negative decision may do so through current grievance procedures in accordance with sections 91 and 92 of the *Public Service Staff Relations Act.* When a department denies a security clearance to external candidates and government employees, the Committee can review the matter; that is, a "right of review" is available to those affected. The procedure is also available to those persons who contract directly with the government, and who are denied a security clearance by a deputy head.

42. In previous years, the response times for the Airport program were included in the Level 1 clearances; hence the reason for the apparent increase in processing days from previous years. The average processing time for the "Airport Restricted Access Program and Accreditation" is one day.

43. GSP Levels: I (Confidential), II (Secret), III (Top Secret).

44. Departments must update an individual's enhanced reliability status, Level I and Level II security clearances once every ten years. Site access security clearances also must be updated every ten years. A Level III security clearance must be updated every five years. Of course, this regular update term does not preclude the department from reviewing a person's reliability status or from asking the Service to reassess the security clearance "for cause." For the year under review, the Service has processed 7,401 requests for updates.

45. For the year under review, the Service processed 2,946 requests for upgrades. Upgrade requests are processed when the new duties or tasks of a person require that the individual have a higher level of screening than previously.

46. Persons from outside the Public Service (applicants and contractors), can complain to the Canadian Human Rights Commission, the Public Service Commission's Investigations Directorate, or the Federal Court, depending on the particulars of each case.

Of the 63,605 government security screening requests that CSIS processed in fiscal year 1996-97, ten were "information briefs"[47] and one was a "rejection brief"— the latter recommending denial of an individual's security clearance. As of June 1997, that person had not submitted the matter to the Committee.

A similar pattern emerges when examining statistics for the previous year. In 1995-96, CSIS received 56,886 requests for security clearances. Of those, the Service issued thirty-nine information briefs and three rejection briefs. Again, none of the individuals involved applied to the Committee for a review of the decision.

The Committee's jurisdiction is limited to evaluating activities and recommendations of CSIS. Thus, in the absence of a complaint by the affected party, SIRC remains unaware of decisions that may or may not have been taken by Federal Government departments on the basis of CSIS information briefs.

The Committee's mandate does allow us to ask the Service whether the departments concerned had endorsed the Service's recommendations. CSIS replied that in two of the three cases, the departments had indeed acted on its recommendations. In the third, the Committee was informed that the recommendation to deny the clearance was never acted upon because the department chose not to hire the individual.

The Committee is concerned by the outcome of these and other similar cases in light of the clear intent of Government Security Policy when it comes to the individual's right to redress and review.

In instances where a security clearance is explicitly denied, the Committee notes that section 42(1)

The Committee is concerned by the outcome of these and other similar cases . . .

Security Clearance Decisions – Loyalty and Reliability

Decisions by Federal departments to grant or deny security clearances are based primarily on the Service's recommendations. Reporting to the Federal organization making the request, CSIS renders an opinion about the subject's "loyalty" to Canada, as well as the individual's "reliability" as it relates to loyalty. Government Security Policy stipulates that a person can be denied a security clearance if there are reasonable grounds to believe that,

- "As it relates to loyalty, the individual is engaged, or may engage, in activities that constitute a threat to the security of Canada within the meaning of the *CSIS Act*."
- "As it relates to reliability, because of personal beliefs, features of character, association with persons or groups considered a security threat, or family or other close ties to persons living in oppressive or hostile countries, the individual may act or may be induced to act in a way that constitutes a 'threat to the security of Canada' or they may disclose, may be induced to disclose or may cause to be disclosed in an unauthorized way, classified information."

47. An "information brief" sets out security concerns about the subject that do not meet the criteria for outright rejection. As such, an information brief is not a recommendation for the rejection of a clearance.

CSIS may enter into an arrangement with the government of a foreign state, a foreign agency, or an international organization

of the *CSIS Act* stipulates that it is the deputy head of a Federal Government department or agency who is responsible for informing employees of the denial of a security clearance. And we are also aware that it is Government policy to inform the persons refused of their right of redress.

Nevertheless, the apparent dearth of recommendations for denial (1 out of 63,605) and information briefs issued by CSIS, as well as the lack of information about what departments do with the information from the Service where no denial was recommended, will be the subject of future inquiries by the Committee.

Extended processing periods

Another issue arising from the three 1995-96 cases concerns the amount of time the Service took to provide the concerned departments with briefs: 26, 27, and 36 months, respectively. The Committee considers such lengthy periods to be excessive, particularly in the case where the Service required three years to respond to a request from a new applicant for a government position. We are aware, however, that delays may be caused by circumstances beyond the Service's control.

Security assessments for foreign states

CSIS may enter into an arrangement with the government of a foreign state, a foreign agency, or an international organization, to provide security assessments on Canadians and foreign nationals. The Service must receive the approval of the Solicitor General who, in turn, consults the Minister of Foreign Affairs and International Trade. CSIS does not provide foreign agencies with recommendations concerning the suitability of a person to obtain a foreign security clearance.

In 1996-97, the Service received 806 foreign screening requests, and, among these, CSIS conducted 160 field investigations. The Service gave foreign clients 25 information briefs.

Advice to the Minister of Citizenship and Immigration

The Committee learned that the "Citizenship Security Flag System" referred to in past annual reports — effectively a mechanism which allowed the Service to alert the Department of Citizenship and Immigration in advance about certain individuals — is no longer in operation. The program provided Citizenship and Immigration Canada with the names and biographical data of permanent residents about whom the Service had identified security concerns. Identification by CSIS in this manner was cause for the government to closely examine the individual's applications for citizenship.

Since 1 January 1997, Citizenship and Immigration Canada employs a mail-in reporting system whereby all applications are processed by a Case Processing Centre in Sydney, Nova Scotia. Names of prospective citizenship applicants are sent from the Centre to the Service, then checked against the Service's security screening information

system data base. Most applications are processed in an expeditious manner; the balance requiring additional analysis by the Service are retained and assessed before the Service provides a recommendation to the citizenship authorities.

In 1996-97, the Service received 142,317 applications from Citizenship and Immigration, including 7,779 requests under the Refugee Determination Program, and 91,873 applications for citizenship. Of the citizenship applications, all but 39 were processed by 30 March 1997.[48]

The Service completed 50,444 immigration requests in fiscal year 1996-97. Fifty percent of these cases were processed in under 42 days. The average response time for the remaining requests was 177 days. The Service rendered its advice for over 99 percent of all cases in less than one year.

Subject of a forthcoming review

In order to better understand the "client-service" relationship between CSIS and the government bodies responsible for citizenship and immigration, the Committee will conduct an in-depth review of CSIS' role. The cooperation of Citizenship and Immigration Canada, the RCMP and immigration legal counsel outside of government, will be essential for the completion of this study.

48. Resolution is still pending for an additional eighteen citizenship applications held over from previous years.