

## 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 effect 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 Direction governs certain types of CSIS investigations in potentially sensitive areas such as investigations on 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 behaviour 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.

In 1996-97 three new Ministerial Directions were brought to our attention.

#### National Requirements

Cabinet periodically provides general direction to CSIS about where it should focus its investigative efforts in the form of National Requirements from the Minister. A recent Direction, *National Requirements for 1995-97*, sets out priorities in five areas: counter terrorism, counter intelligence, security screening, "foreign intelligence support" and "transnational criminal activity."

The latter category represents a significant alteration of the previous requirements Direction issued in 1994-95 in that it instructs the Service to provide government with strategic assessments of transnational criminal activity that may impact on the security of Canada. In a related issue, CSIS was also directed to continue to provide criminal intelligence to Canadian law enforcement agencies under the provisions of section 19 of the *CSIS Act*.

In past Committee audits, we have expressed concern about the tardy

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provision of Ministerial Direction on *National Requirements*. The Direction — in effect a planning document — was not being issued before the end of the relevant year. The Minister elected to issue the *National Requirements* in a Direction that covered two fiscal years — 1995-96 and 1996-97. The Committee notes that the *National Requirements* for 1997-98 have been issued.

While the Committee was unable to comment in last year's report on the *National Requirements* applicable to that period because of their late issuance, we have identified no difficulties arising from that fact.

#### **Information management**

The Ministerial Direction on "Information Management" is intended to be a cumulative document, encompassing all previous Direction regarding the Service's management, retention, and destruction of files. The Direction also takes into consideration rapidly evolving information technologies.

Previous versions of the Information Management Direction from the Solicitor General specifically stated that "open information which does not meet the statutory tests for collection or retention should in future be held by CSIS quite separately and apart from investigative files." Upon review of the most recent Direction, the Committee noted that it did not contain this requirement.

In response to our query, the Ministry of the Solicitor General informed the Committee that the Direction omitted the requirement in order to allow CSIS time to discuss the policy and formulate its position on the issue.

The Ministry informed us that a new Direction on the retention of open source information is forthcoming.

#### **Investigations on campus**

Previous Ministerial Direction for "Investigations on Campus" required the approval of the Solicitor General for all CSIS operations on campus that could impact on the free flow of ideas associated with academic institutions. New Ministerial Direction reaffirms this principle, but states that the Director of CSIS can on his own approve source activities in specified circumstances, and must report his decisions to the Minister.

In a previous audit report, the Committee recommended that the Ministerial Direction governing investigations on campus be rewritten, and we note that the new Direction addresses Committee concerns about the terminology in the previous Direction not being consistent with the *CSIS Act*.

The Committee will monitor how the Service implements the new Direction.

#### **Activities to overthrow by violence**

Pursuant to Ministerial Direction issued in 1988, the Minister must approve any investigation of threats falling under what is commonly referred to as the "subversion" section of the *CSIS Act* — section 2(d), "activities directed toward...the destruction or overthrow by violence of the constitutionally established system of government in Canada." In 1996-97, the Solicitor General authorized no investigations in this regard.

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### 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.

In fiscal year 1996-97, the Service produced three new policies and several revisions:

- standardizing the format of threat assessments;
- cooperating with the Department of Citizenship and Immigration Canada; and
- obtaining premises for CSIS operations.

In the course of the Committee's assessment of the new Ministerial Direction on Information Management, the Service referred to an internal policy document we had not seen. Upon our request, CSIS provided the Committee with a copy of a "service wide" policy which had been in force since 1993. While the Committee found nothing in the policy with which to take issue, we believe that important policy instruments such as these should be placed in the official policy manual more quickly.

### Disclosures of information in the public and in the national interest

#### Disclosures 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; in 1996-97 there were none.

#### Disclosures 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."<sup>49</sup> 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.

While the Committee was initially concerned about the implications of such special disclosures, a new CSIS policy stipulates that we will be informed whenever they take place. The Committee will examine future special disclosures on a case by case basis. There were none during the fiscal year 1996-97.

### Governor in Council regulations and appointments

Under section 8(4) of the *CSIS Act*, the Governor in Council may make regulations concerning appointments

49. On occasion, in the course of its investigations, CSIS obtains information that does not fall within the Service's mandate, but which should be provided to the proper authorities as it is in the public interest. The Solicitor General must decide if the disclosure is essential to the public interest, and whether this interest clearly outweighs any invasion of privacy that could result. With the Minister's approval, CSIS may disclose this information to any Minister of the Crown or to a person in the Public Service of Canada. See section 19(2)(d) of the *CSIS Act*.

and other personnel matters. No such regulations were issued in 1996-97.

### Annual report of the Director of CSIS

The CSIS Director's Annual Report to the Solicitor General (a top secret document) comments in some detail on the Service's operational activities for the preceding fiscal year. The Committee has among its key functions, the task of reviewing this report.

This year, we comment on two annual reports. In our audit report of 1995-96, the Committee was unable to comment on the Director's report of that same fiscal year since we received his report past the point for publication in our Annual Report for that year. As a result, we describe both the 1995-96 and the 1996-97 reports from the Director in this section.

#### Director's report for 1995-96

In the view of the Committee, the salient points of the Director's Annual Report of 1995-96, were the following:

- The Director stated that public safety remained the Service's principal concern, and noted that the main source of politically motivated violence is the "spillover of foreign conflicts into Canada" — a factor reflected in the fact that almost two-thirds of all CSIS investigations in 1995-96 were conducted by the Counter Terrorism Branch of the Service, rather than by Counter Intelligence.
- In 1995-96, Counter Intelligence Branch reported that some thirty

countries operate "against Canadian interests, within Canada or abroad." The Service was attempting to use the establishment of liaison relations as an incentive to encourage foreign intelligence services to cease their intelligence activities in Canada.

- CSIS is becoming increasingly involved in investigating transnational crime.
- To the end of March 1996, CSIS had decreased the average time required to process a "top secret" clearance for a government employee or contractor from 113 days to 84 days as a result of the implementation of a new automated system.
- Fiscal year 1995-96 marked the establishment of a new program called the Refugee Watch List. This internal program identifies persons who are considered to be security threats and who may seek refugee status or permanent residence in Canada, or attempt to obtain a sensitive position in the Federal Government.

The Committee has three comments about the Director's report:

First, we believe that where the Minister is not otherwise informed by the Service, the Director's Report should explain the significant and substantial departures from past CSIS practices and methods. If the reasons for the trends or changes are not apparent to us, we will seek explanations from the Service and, if not satisfied, the Committee will investigate further.

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Second, absent from the report are discussions of important issues concerning the Service's operations. For example, the report does not address issues surrounding the impact of technology on Service activities.

Third, we found that the Annual Report was silent on the activities of the Analysis and Production Branch (RAP). RAP is an important operational branch and a major conduit for advice CSIS provides to the Federal Government. It would be helpful if in future, the Director would report on such Analysis and Production Branch activities as the quantity and types of intelligence reports it produces, requirements of the consumers of RAP information, and the feedback that RAP receives from them. CSIS says that when required, information of this type can be conveyed to the Minister by other means.

**Director's report for 1996-97**

In his 1996-97 Annual Report, the Director emphasized that Canada faces profound, and not entirely positive changes in the global security environment; an environment that has become more unstable and unpredictable in view of the fact that the activities arising from traditional threats have not gone away, and new types have emerged.

We found that the Director's 1996-97 Annual Report provides a satisfactory overview of CSIS' most important investigative activities. We also concluded, however, that the Service did not report, or did not report in sufficient detail, on two important areas.

First, the Director could have provided more information about certain

domestic extremism investigations. And second, the Director's report did not provide an assessment of the relationship between a certain state's hostile activities in Canada, and the impact on existing arrangements for cooperation with that country.

**Certificate of the Inspector General<sup>50</sup>**

The *CSIS Act* [section 38(a)(i)] directs the Committee to review the Certificates issued by the Inspector General of CSIS. In his Certificate, the Inspector General assesses the Director's Annual Report and he also conveys the findings from his audits of the Service's operational activities. The Certificate is based in large part on the Inspector General's studies and consultation reports.

The Committee received the Inspector General's Certificate covering fiscal year 1994-95 in October 1996. We did not receive his Certificate for 1996 in time for review and publication in this Annual Report.

The Inspector General commented that he was satisfied that the Director's Annual Report (1994-95) "made a useful contribution to the Solicitor General's appreciation of CSIS operations and provided him with information of value in carrying out his oversight role." But the Inspector General's audit also found a number of inaccuracies and unsubstantiated statements in the Director's report.

**Inspector General's observations**

In his review of CSIS activities for 1994-95, the Inspector General made a number of observations and recommendations to the Solicitor General.

<sup>50</sup>. See inset on page 19 for a description of the role of the Inspector General of CSIS.

The Inspector General concluded that the Minister received insufficient information from CSIS in the areas of section 16 operations, section 17 arrangements, and human source operations.

He recommended that for issue-based targeting, the Service should take special care to document the grounds on which it bases requests for authorization to investigate.<sup>51</sup>

The Inspector General also suggested that CSIS clearly specify how proposed joint operations with allied intelligence agencies fulfill the statutory duties and functions of the Service. CSIS, with the Minister's approval, sometimes runs intelligence operations in Canada with the assistance of allied intelligence services. He added that the Solicitor General may wish to give CSIS guidance on when and how he should be informed of the outcome of approved operations.

The Inspector General recommended that CSIS clarify the nature and limits of Security Liaison Officers (SLO) duties abroad, and that the Solicitor General should be informed beforehand if any extraordinary measures by the SLOs are to be taken. (See page 3 for a description and assessment of the foreign liaison program, and the role of SLOs).

The Inspector General commented on a number of other matters including, the provision of warnings or advice to the private sector, the Service's transmittal of information to the Department of Foreign Affairs and International Trade, and CSIS compliance with warrant conditions regarding solicitor-client communications. He

recommended that when the Service brings cases to the Solicitor General for a decision, it should be more explicit in linking the circumstances of each case to the governing authorities and relevant controls that apply.

Finally, the Inspector General objected to a CSIS decision not to provide him with certain documents on the grounds that they were administrative in nature.

### Special reports of the Inspector General

While the Inspector General's Certificate is his principal method of reporting his findings, he may issue special studies from time to time. We were made aware of no special studies in 1996-97. Under section 40 of the *CSIS Act*, the Committee can itself request the Inspector General to conduct a special study or a review on our behalf. In 1996-97 we made no such requests.

### Unlawful conduct

Under section 20(2) of the *CSIS Act*, the Director 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 1996-97, there were no cases of unlawful conduct reported to the Attorney General or the Committee. Of the 13 previous referrals to the Attorney General, all but two have been resolved. The two outstanding cases date back to 1989 and 1990, respectively.

**The Inspector General's audit also found a number of inaccuracies and unsubstantiated statements in the Director's report**

<sup>51</sup> As the Committee noted earlier, (page 17) issue-based targeting takes place when CSIS investigates a particular sector, such as economic espionage, rather than groups or persons.

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### The Committee Members met with officials from CSIS' Regional Headquarters in order to keep abreast of their operations and problems

#### SIRC consultations and inquiries

As noted earlier, the Committee is a key part of the CSIS accountability structure. In 1996-97 we undertook specific activities in this respect in the following areas:

##### Formal inquiries

During the fiscal year (1 April 1996 - 31 March 1997), we directed 141 formal inquiries to the Service. This number does not include inquiries arising out of complaints. The average time CSIS took to answer a formal inquiry was 44 days, a decrease from last year's average of 53 days.

##### Briefings

The newly-appointed Chair, Paule Gauthier, P.C., O.C., Q.C., met with the Director of CSIS in November 1996, and the Commissioner for the Communications Security Establishment (CSE) in December 1996. The Chair and Committee Members met with the Director of CSIS in May 1996, and in December 1996. These meetings are over and above the daily contact that our Research Staff has with the Service.

The Committee Members met with officials from CSIS' Regional Headquarters in Vancouver, Halifax, Ottawa, Montreal, and Toronto in order to keep abreast of their operations and problems.

##### SIRC activities additional to CSIS review

The Committee met with the Inspector General of CSIS in January 1997, and the Coordinator of Security and Intelligence in the Privy Council Office in February 1997.

Visiting dignitaries from other countries often ask to meet with Members of the Review Committee. In 1996-97, the Committee met with:

- Australia's Inspector-General of Intelligence and Security, and Australia's High Commissioner to Canada (August 1996);
- staff from South Africa's Joint Standing Committee on Intelligence (JSCI) and a security agency in that country (February 1997); and
- Poland's Minister Responsible for Security, who was accompanied by two security chiefs (March 1997).

The Deputy Executive Director addressed a conference of security officials from the North Atlantic Cooperation Council/Partners for Peace (NACC/PfP). Sponsored by the NATO Special Committee, the conference was held in Brussels in November 1996 and provided SIRC with a unique opportunity to share Canada's experience in reviewing the operations of a domestic security intelligence agency with the Western powers and the emerging democracies.

The Committee's Counsel/Senior Complaints Officer attended a series of conferences sponsored by the Canadian Bar Association and the Council of Canadian Administrative Tribunals in Toronto, Hull, and Vancouver. The conferences dealt with administrative law and immigration issues.

**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 1996-97, 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**

In October 1996, the Honourable Paule Gauthier, P.C., O.C., Q.C. was appointed as Chair of the Committee,<sup>52</sup> and the Honourable James Andrews Grant, P.C., Q.C. was appointed to replace her as a Member of the Committee.

**Accounting to Parliament**

The Committee appeared before the Sub-Committee on National Security on 15 May 1996 to respond to questions about the *Main Estimates* for fiscal year 1996-97.

On 24 October 1996, the Solicitor General tabled the Committee's 1995-96 Annual Report in Parlia-

ment. Although it is the Minister who tables the Committee's report in the House of Commons, he has no authority to edit or otherwise alter the Committee's document.

The Committee was invited to appear before the Sub-Committee on National Security on 3 December 1996 to answer questions concerning its 1995-96 Annual Report. During this appearance, the Chair stated that she hoped that in future, "the relationship between the Sub-Committee and SIRC becomes one of mutual trust."

The Committee again appeared before the Sub-Committee on National Security on 15 April 1997, to answer questions about the 1997-98 *Main Estimates*.

**Staying in touch with Canadians**

Research Staff attended the Intelligence Studies Section at the annual conference of the International Studies Association (ISA), held in Toronto in March 1997. They also participated in the conference and annual general meeting of the Canadian Association for Security and Intelligence Studies (CASIS) held at the same time.

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**Table 4**  
**SIRC budget 1996-97**

	1996-97	1995-96
<b>Personnel</b>	<b>805,000</b>	<b>799,000</b>
<b>Good and Services</b>	<b>598,000</b>	<b>616,000</b>
<b>Total Operating Expenses</b>	<b>1,403,000</b>	<b>1,415,000</b>

Source: 1996-97 Estimates, Part III, Section II.

52. Mme Gauthier had been a Member of the Committee since 8 June 1995, and had previously served from 1984 to 1991.



**SIRC opened its official site on the Internet in late October 1996 — [www.sirc-csars.gc.ca](http://www.sirc-csars.gc.ca).**

#### **SIRC on the internet**

To provide information about the Committee and its work to a wider audience, SIRC opened its official site on the Internet in late October 1996 — [www.sirc-csars.gc.ca](http://www.sirc-csars.gc.ca). To date, the Web site has been visited over eighty-five thousand times.

Our Web site explains the mandate of the Committee and provides information on SIRC's activities, biographies of the Committee Members, full versions of recent annual reports, lists of SIRC studies, recent changes to legislation that impact on the Committee, and a search procedure to allow visitors to find information on specific subjects.

The site also informs the visitor about how to file complaints to the Committee under sections 41 and 42 of the *CSIS Act*, and has links to other Internet sites we believe will be of interest to visitors; among these are Parliament, the Privacy Commissioner, and the Access to Information Commissioner.

#### **Impact of budget changes**

SIRC has reduced its spending levels since 1991-92, and will continue to do so over the next two fiscal years. Although the reductions have not been large in absolute terms, they are significant for a small organization with little budget flexibility.

Figure 1 understates the degree to which the Committee's budget has been reduced because commencing in 1995-96, translation services (\$50,000) are now included in SIRC's reference levels. Prior to 1995-96, these services were provided gratis through the Translation Bureau, Secretary of State.

#### **Adapting to budget restraint**

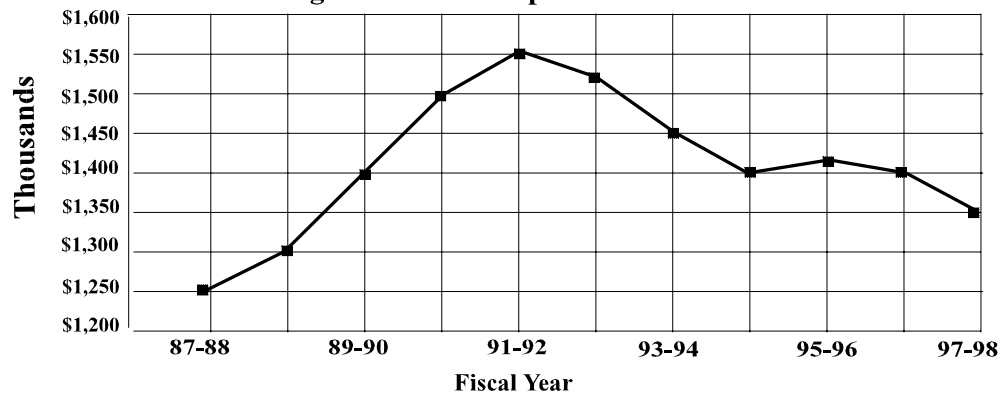
Government-wide budget reductions at SIRC have had an impact on the Committee's activities. The investigation of complaints is the most expensive area of discretionary spending for the Committee, and must, therefore, bear the brunt of the budget cuts. To deal with the reductions, the Committee is doing more work in house, and using outside lawyers less. While undertaking this and other measures, the Committee is determined to avoid increasing the time required to handle complaints, and to maintain the quality of its reports.

The review area is also being affected by budget reductions. As with complaints, more work is being done internally, and the Committee is employing fewer contract research consultants. In addition, SIRC has reduced the funding for seminars. Instead, we rely more on one-to-one meetings with academics and other experts.

In 1997-98, the Committee will increase its productivity by reassigning two positions from the General Administrative or support category to the Research section. This should increase the Research section's output by one third at minimal extra cost.

The Committee believes that all of these steps combined, together with a continuing effort to improve efficiency, will allow SIRC to maintain or improve the performance of its responsibilities to Parliament and the public at lower cost.

Figure 1: SIRC Expenditures 1987-1998



### Personnel

The Committee has a small total staff of fourteen: 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 the sensitive and highly classified material using special security procedures.

### Reorganization and increased productivity

Effective 1 April 1997, the Committee restructured its research function to use its resources more efficiently. The Committee has integrated all research resources under a deputy executive director to more closely mirror the current deployment of resources within CSIS, and to effectively manage the intensive research program.

To recognize the contributions of the Senior Complaints Officer and the Committee's increased reliance on in-house legal resources for handling complaints cases, Sylvia MacKenzie was appointed as the Counsel and Senior Complaints Officer, effective 1 April 1997.

The Committee decides formally at its monthly meetings the research and other activities it wishes to pursue, and sets priorities for the staff. Day-to-day operations are delegated to the Executive Director with direction when necessary from the Chair in her role as the Chief Executive Officer of the organization.

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