Section 2: Investigation of Complaints

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

- 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 1997-98 fiscal year.

Section B reviews the complaints the Committee received in respect of Service's role in security screening for the Government of Canada.

During the 1997-98 fiscal year, we received 30 new complaints under section 41 of the *CSIS Act* ("any act or thing")

A. 1997-98 Complaints about CSIS Activities

Statistics

During the 1997-98 fiscal year, we received 30 new complaints under section 41 of the *CSIS Act* ("any act or thing") and one under

Table 2
Complaints (1 April 1997 to 31 March 1998)

	New Complaints	Carried Over from 1996-97	Closed in 1997-98	Carried to 1998-99
CSIS Activities	30	2	29	3
Security Clearances	1	0	0	1
Immigration	0	1	1	0
Citizenship	0	1	0	1
Human Rights	1	0	1	0

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.

section 42 (denial of security clearance). In addition, we rendered a decision with respect to a Ministerial report pertaining to the *Immigration Act* and resumed an investigation of another Ministerial report under the *Citizenship Act*.

On April 30, 1998, the Supreme Court of Canada denied Mr. Ernst Zündel's application for leave to appeal the Federal Court of Appeal's decision.[30] The leave to appeal having been denied, the Federal Court of Appeal's decision stands: SIRC is duly authorized to conduct its investigation under the Citizenship Act.[31]

Findings on 1997-98 Complaints "with respect to any act or thing"

During fiscal year 1997-98, we received four complaints from persons who alleged that the Service had subjected them to surveillance, illegal actions or had otherwise abused its powers.

In response to complaints of this nature, the Committee as a general rule neither confirms nor denies that the person complaining is a target.[32] However, we do undertake a thorough investigation of the complainant's assertions in order to ensure that the Service has not used its powers unreasonably. If we find that the Service has acted appropriately, we then convey that assurance to the complainant. If there is any doubt, however, and pursuant to the procedures set out in the *CSIS Act*, we convey the results of our inquiries to the Solicitor General and the complainant.

The Committee noted this year an unusual departure from normal CSIS practice with respect to complaints. In response to a specific query, the Service deviated from its usual practice of neither confirming nor

denying that an individual is a target by stating positively that the complainant in question had not been the subject of a section 12 investigation.

Not satisfied with the response, the complainant's counsel asked the Committee to investigate further. Our investigation revealed that CSIS had not been involved in the activities described.[33] In communicating our findings to the complainant we noted that while we could certainly understand the frustration our response might elicit, it was the Committee's view based on experience that CSIS would not willfully deny the existence of information in the knowledge that SIRC's powers of review and its access to all of the Service's holdings would reveal the information if it indeed existed.

The Committee found nothing unreasonable or inappropriate in CSIS activities in relation to the three other cases, and that assurance was conveyed to the complainants.

Complaints Regarding CSIS Assistance to Citizenship and Immigration

During fiscal year 1997-98, we received ten complaints dealing with the Service's assistance role in the delivery of the Immigration Program. Most dealt with the time taken by CSIS to provide security assessments or advice to the Minister of Citizenship and Immigration .

In one case where we had completed a review of the documentation, the complainant informed the Committee that he did not wish to pursue the matter further. In respect of another six cases, we confirmed to the complainants upon completion of our review that CSIS had finished its enquiries and provided its advice to CIC. Because the Committee has no jurisdiction regarding the activities of CIC, our role typically ends at this point unless the complainant requests further inquiries. In an additional three cases, requests were made that the Committee look more closely into CSIS conduct during security screening interviews and at the nature of the Service's advice to CIC. The necessary investigations (which involve the testimony of numerous witnesses) are not yet complete, and will be reported upon in next year's annual audit report.

The Committee found nothing unreasonable or inappropriate in CSIS activities in relation to the three other cases

Misdirected Complaints and Complaints Outside SIRC's Mandate

During the year, the Committee received five complaints regarding matters that had not yet been taken up with the Service by the complainants. We informed each of the complainants of the requirement set out in the *Act*, whereby all complaints must first be submitted to the Director of CSIS. As at July 1998, the Committee has heard from only one complainant claiming to be not satisfied with the Service's response. We are currently investigating the matter.

In respect of eight additional complaints, our preliminary reviews led us to conclude that the complaints did not fall within the purview of the Committee as set out in the *CSIS Act*. In two of the eight cases, the complainants (both ex-CSIS employees) were entitled to seek redress by means of a grievance procedure.

Another complaint consisted of a request by a representative of CSIS employees for the Committee to look "again" at bilingualism

The focus of our investigation is on the decision of the deputy head to deny the government employee or contractor a security clearance

and work relations within the Service. In 1986, the Solicitor General, with the concurrence of the Director of CSIS, asked the Committee to review the linguistic situation in the Service with a view to assessing the likely impacts of Official Languages programs on the Service's operations. However, in our response to this recent complainant, the Committee expressed the view that Commissioner of Official Languages was better qualified to undertake such a review. In the absence of a specific mandate from the Solicitor General, and taking into consideration the limits of our enabling statute,[34] we concluded that the issue was not within the Committee's mandate.

Findings on 1997-98 Security Clearance Complaints

We received one complaint pursuant to the denial of a security clearance. As is normal in cases of this type, the focus of our investigation is on the decision of the deputy head to deny the government employee or contractor a security clearance — a decision usually based primarily on the Service's recommendation.

At the time of publication of this report, the complainant had informed us that he intended to avail himself of the opportunity to make representations to the Committee about the deputy head's decision to deny the clearance.

Findings on 1997-98 Ministerial Reports

Citizenship Refusals

In our 1995-96 annual report, the Committee reported that it had received a Ministerial report concerning the citizenship application of Ernst Zündel. At that time, SIRC's jurisdiction to investigate the matter was successfully challenged in the Federal Court of Canada, where it was held that because of statements contained in a SIRC report, *The Heritage Front Affair*, (a study carried out under a different part of the Committee's mandate) there was a reasonable apprehension that the Committee would be biased in its investigation of the Ministerial report about Mr. Zündel.

The Government subsequently appealed the decision, and on 27 November 1997 the Federal Court of Appeal ruled: "Considering SIRC's duality of functions, which must be understood as permitting the exercise of both powers, and considering that this bi-functional structure does not in itself give rise to a reasonable appearance of bias..." the Court saw no reason why the Committee, acting within its statutory framework, should be prohibited from pursuing an investigation of Mr. Zündel under the *Citizenship Act*, notwithstanding earlier statements.

Mr. Zündel sought leave to appeal this decision to the Supreme Court of Canada — leave which was denied on 30 April 1998. Because the Member originally assigned to the investigation has since died, the Committee has had to resume its investigation *ab initio*. The matter is in the process of being heard.

Deportation Orders

The Committee received no Ministerial Reports of this type during 1997-98. However, a case involving a report received in 1996-97 has continued to evolve. In a matter

first heard by our former Chair, the Committee ruled that the subject of the complaint was of such character as to fall within the class of persons described within paragraph 19(1)(g) of the *Immigration Act*: "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.

The Committee's decision was appealed, with the Federal Court of Canada ruling that portions of 19(1)(g) contravened the freedom of association assured by paragraph 2(d) of the *Charter of Rights and Freedoms* in a manner that was not demonstrably justified in a free and democratic society. The Court referred the matter back to the Committee for reconsideration.

Another Committee Member was subsequently asked to rule on whether the subject of the complaint, a permanent resident of Canada, was a person described in paragraphs 19(1)(e), 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 remained in force following the Federal Court judgement.

Having found that the subject of the Ministerial Report was a person described in paragraphs 19 (1)(e) and 19 (1) (g), the Member concluded that a security certificate should be issued.

Canadian Human Rights Commission Referrals

The Committee received one referral from the Canadian Human Rights Commission based on alleged discrimination in employment on the grounds of religion — discrimination contrary to the *Canadian Human Rights Act.*[35]

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 of the Committee

After examining all the files in the case, and receiving representations from all parties, the Committee saw no evidence to substantiate allegations of discrimination. We found further that the assertion by the Department concerned that its denial of clearance was based wholly on matters concerning the security of Canada had merit and had been adequately substantiated.

B: 1997-98 Complaints about Security Screening

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.

Committee Findings

For the year under review, CSIS forwarded eighteen briefs[36] to departments, twelve of which were information briefs and six were rejection briefs. Since the Service's Government Security Policy (GSP) clients are required to notify the Service of their decision only when it differs from the Service's recommendation, and given that there were no instances in which CSIS was so informed, it can be deduced that there were six denials of a security clearances by

The Evolution of the Security Clearance Complaints Procedure

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.

government departments. It should be noted that in the absence of a complaint by an affected party, the Committee is unaware of decisions that may or may not have been taken by Federal Government departments on the basis of CSIS briefs. The Committee noted with interest that although the number of security clearance denials had increased, the number of these complaints to the Committee had not risen accordingly.

Unequal Access to "Right of Review"

As noted in the description of the procedures in place for handling security clearance complaints, 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.

For government employees denied clearance, there exists a "right of review" by the Committee. However, section 42 gives this right only to those persons who contract directly with the government. For individuals and employees falling under the jurisdiction of Aerodrome Security Regulations and the *Aeronautics Act*, their only recourse is the comparatively lengthy and expensive process of a Federal Court action.

The number of people potentially involved is significant. Before an airport restricted area pass can be issued, an individual must have an airport security clearance. Since the inception in 1987 of the Airport Restricted Area Access Clearance Program, more than 140,000 persons have had to obtain such clearance and 31 individuals have had clearance denied to them. None have access to a Committee review of their cases.

The issue of the unequal redress system has been a preoccupation of the Committee since 1987

The issue of the unequal redress system has been a preoccupation of the Committee since 1987 and we believe that the situation should not be allowed to continue. The Committee understands that the Minister of Transport made representations to the Solicitor General concerning the problem in 1996. We hope the matter will be pursued so that this obvious inequity can be remedied.

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."

Security Screening in the Government of Canada

The Government Security Policy (GSP) 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* (the "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 (i.e., 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. 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.