

C. Inside CSIS

Statistics on Operational Activities

Section 2(d) Investigations

The Minister must approve any investigation by CSIS under section 2(d) of the *CSIS Act*, often referred to the “subversion” clause. The Minister authorized no such investigations in 1998-99.

Warrants and Warrant Statistics

Collecting and evaluating information on warrants is viewed by the Committee as an important task. Warrants are one of the most powerful and intrusive tools in the hands of any branch of the Government of Canada; for this reason alone their use bears continued scrutiny. In addition, the kinds of warrants

The total number of persons affected by CSIS warrant powers remained relatively stable.

Table 1
New and Renewed Warrants

	1996-97	1997-98	1998-99
New Warrants Granted	125	72	84
Warrants Renewed/Replaced ¹⁵	163	153	163
Total	288	225	247

granted and the nature of the targets listed provide insight into the entire breadth of CSIS investigative activities and are an important indicator of the Service's view of its priorities.

We compile statistics based on a quarterly review of all warrant affidavits and warrants granted by the Federal Court. Several kinds of information are tracked annually, such as the number of persons and number of locations subject to warrant powers. This format continues a practice established prior to the *CSIS Act*. Table 1 compares the number of warrants over three fiscal years.

Findings of the Committee

While the data provides the Committee with an excellent profile of the Service's requests for warrant powers in a given year, comparisons year-to-year are less enlightening, because the applications vary as a result of legal decisions by the Courts and new developments in technology. In addition, raw warrant numbers can be misleading since one warrant can authorize the use of a power against one or many persons.

Despite these variables, however, the Committee concluded that measured overall, the total number of persons affected by CSIS warrant powers remained relatively stable for the last two years, and foreign nationals continued to represent the overwhelming majority of persons subject to warrant powers.

Regulations

Under section 28 of the *CSIS Act*, the Governor in Council may issue regulations governing how CSIS applies for warrants. In 1998-99, no such regulations were issued.

Federal Court Warrant Conditions and Other Developments

Warrant Conditions

Most warrants authorized by the Federal Court contain conditions which limit the use of warrant powers and which the Service must follow in their execution. In 1998-99, the Federal Court instructed CSIS to:

- add a new condition pertaining to the destruction of video images of persons who are not targets; and
- revise an existing condition to limit the Service's discretion to intercept targets at certain locations.

We learned that in 1998 CSIS commenced a complete review of its warrants that will affect the clauses and conditions in all warrants. Some revised clauses and conditions have already been approved by the Federal Court. CSIS expects to complete the process in fiscal 1999-2000.

Court Denials of Warrants

In 1998-99, the Federal Court of Canada denied a CSIS application to replace expiring warrants. The Court rejected the application because it was not convinced that the requirements of paragraphs 21(2)(a) and (b) of the *CSIS Act* had been met.¹⁶ We understood that the Service was not planning to return to the Federal Court with a revised application.

New Court Decisions

In 1998-99, the Federal Court rendered two decisions which affected CSIS' use of certain warrant clauses.

In one case, the Federal Court instructed CSIS to delete a clause in a warrant that dealt with a particular type of target. Since the decision was specific to this case, it did not affect other warrant applications containing the same clause.

In the second case, the Federal Court found that a new wording of the Service's "resort to"¹⁷ clause with respect to a specific search power was overly broad and as such constituted an improper use of the clause. The Court also held it to be an illegal delegation of the authority of the Court. The clause allowed the Service to search a place not named in the warrant when it had reasonable grounds to believe an object or thing belonging to the subject of the warrant could be found at that location. CSIS has since removed this clause from new warrants and has advised its regional offices that they are not to make use of the clause where it occurs in existing warrants.

CSIS Operational Branches

Counter Terrorism Branch

The Counter Terrorism (CT) Branch is one of the two main operational branches at CSIS (the other being Counter Intelligence) and its role is to provide the Government of Canada with advice about emerging threats of serious violence that could affect the national security of Canada. The threat from international terrorism continues to be associated with what are termed "homeland" conflicts. Various domestic extremist groups are also regarded as potential threats to the security of Canada because of their capacity to foment violence.

During the year under review, we noted some significant changes (increases and decreases) in the number of investigations of potential threats from extremist groups in Asia and the Middle East. The Branch listed its priorities to be in the areas of chemical, biological, radiological and nuclear terrorism; cyber terrorism and threats to information operations; and fund raising for alleged terrorist operations. In addition, CT Branch continued to respond to significant domestic threats of violence.

The Committee finds it noteworthy that since the end of the Cold War, CSIS resources devoted to investigatory activities have been directed away from counter intelligence in favour of counter terrorism issues, such that CT currently consumes upwards of 60 per cent of the Service's budget.

Threat Assessments

CSIS provides threat assessments to departments and agencies within the Federal Government based on relevant and timely intelligence. CSIS prepares assessments—upon request or on an unsolicited basis—dealing with special events, threats to diplomatic establishments in Canada, and other situations. Threat assessments can play a crucial role, not only in advising authorities when an activity such as a demonstration is likely to degenerate into violence, but also in reassuring authorities when there is, in fact, little likelihood of violence.

In 1998-99, the CT Branch Threat Assessment Unit produced 683 assessments, up almost 20 percent from the previous year. The Service cited no specific reason for the increase. The volume of threat assessments

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depends on a variety of factors—the number of foreign visitors to Canada, requests received from other Government departments and agencies, special events, and threats received or developed over the year—all of which are beyond Service control.

Counter Intelligence Branch

The Counter Intelligence (CI) Branch monitors threats to national security stemming from the espionage activities of other national governments' offensive intelligence activities in Canada.

We reported last year that the Service had signed foreign arrangements with the intelligence agencies of some current and former adversaries in order to encourage them to act with more transparency and to explore common ground for cooperation and information sharing. In response to a Committee inquiry about the results of this ongoing effort, the Service reported that while it had set out no specific objectives, it regarded the process of establishing sustained and trusted relationships with foreign intelligence services as “never-ending.”

CSIS described the progress of these new

relationships as positive, slow, and cautious, involving the development of parameters for information exchange, focus on increasing the level of mutual trust, and regular reevaluation.

The Service told the Committee that Government fiscal restraints have had particular impact on activities. In the Service's view, current resources provide “little room for manoeuvre” in choosing which threats should receive special attention.

Analysis and Production Branch

In last year's report, the Committee stated its intention to conduct an in-depth study of the Service's Analysis and Production (RAP) Branch. The results of our review are found in Section 1, page 11.

The RAP Branch provides advice to government on the threats to the security of Canada through the production of CSIS Reports, CSIS Studies, and CSIS Intelligence Briefs. Table 2 shows the number of reports published by RAP in fiscal year 1998-99.

RAP produced a total of 68 reports, a slight decline from 73 issued in 1997-98. The Service's contribution to the Intelligence

Table 2
RAP Reports

CSIS Reports, Studies and Intelligence Briefs	Commentary	Intelligence Assessment Committee (IAC)
68	3	5 (Lead) 17 (Contribution)

Assessment Committee (IAC) remained essentially unchanged from last year.¹⁸ There were three issues of the Service's unclassified periodical *Commentary*.

Government Liaison Unit

The RAP Government Liaison Unit is the mechanism by which CSIS identifies the interests of government departments and agencies. An initiative of the Branch in 1997-98 was the publication of quarterly reports, for CSIS use only, detailing comments and feedback from the Branch's clients. The Committee noted with regret that this initiative was not pursued in 1998-99.

Arrangements with Other Departments and Governments

CSIS and the Royal Canadian Mounted Police

Among the most important of the Service's domestic arrangements is that with the RCMP. As an information addendum to the major two-part review of the relationship (See page 20) we present here developments in CSIS-RCMP cooperation for fiscal year 1998-99.

Information Exchanges

CSIS and the RCMP exchange information about their activities pursuant to their respective mandates: CSIS collects and disseminates information about threats to the security of Canada, and the RCMP carries out its mandated law enforcement functions in relation to the same threats.

Of the totality of written information

exchanged in both directions in fiscal year 98-99, CSIS was responsible for generating more than two-thirds. And three operational branches at Service Headquarters (Counter Terrorism, Counter Intelligence, and Analysis and Production) produced most of that volume.

CSIS-RCMP Liaison Program

The mechanisms to facilitate liaison and cooperation between CSIS and the RCMP are set out in the Memorandum of Understanding (MOU) between the two agencies. They include the assignment of liaison officers to national headquarters and to each of the regional offices.

Our review showed that during the relevant period, both agencies appeared committed to improving the liaison program. The Senior Liaison Committee—established as a forum to resolve problems and disagreements between the two agencies and defunct since 1993—was reactivated.

Revision of the CSIS-RCMP Memorandum of Understanding

In last year's report the Committee commented on the concerns expressed by both CSIS and the RCMP that the existing MOU did not adequately address the disclosure problems associated with the *Stinchcombe* decision. As part of an internal audit begun in the fall of 1998, the RCMP has undertaken a review of the CSIS-RCMP MOU. The Committee will monitor the results of this review for its potential impact on Service activities. We have observed that even in the wake of the *Stinchcombe* decision, the Service continues to provide a great deal of information to the RCMP.

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Domestic Arrangements

In carrying out its mandate, CSIS cooperates with police forces, and federal and provincial departments and agencies across Canada. Pursuant to section 17(1)(a) of the *CSIS Act*, the Service may conclude written cooperation agreements with domestic agencies after having received the approval of the Minister. The Service is not required to enter into a formal arrangement in order to pass information to or cooperate on an operational level with domestic agencies. However, it is the usual practice for the Service to enter into a formal arrangement when the other party requires terms of reference or the setting out of agreed undertakings.

Currently, CSIS has nineteen formal MOUs with Federal Government departments and agencies, and eight with the provinces. CSIS also has a separate MOU with several police forces in one province.

Arrangements for 1998-99

The Service signed no new MOUs with domestic agencies in fiscal year 1998-99. However, the Service did receive Ministerial approval to conduct a number of security assessments for a provincial agency in advance of final authorization to conclude a future arrangement with that agency.

During fiscal 1998-99, the Service also made minor “housekeeping” amendments to an MOU it has with a federal department reflecting changes in contacts within and between the respective agencies. In accordance with an MOU’s termination clause, an arrangement with another federal agency

lapsed automatically in 1998. We were informed that after extensive consultations, the Service determined that renewal was not necessary.

In 1998, the Treasury Board made a budgetary transfer to the Service in order for it to take on the responsibility of providing security assessments for the Department of National Defence.

International Arrangements

Pursuant to subsection 17 (1)(b) of the *CSIS Act*, the Service must obtain the approval of the Solicitor General—after he has consulted with the Minister of Foreign Affairs—in order to enter into an arrangement with the government of a foreign state or an international organization. During the initial phases leading to the approval of an arrangement, CSIS is not permitted to pass classified information to the foreign agency. However, it may accept unsolicited information.

Arrangements for 1998-99

During fiscal year 1998-99, CSIS received the Minister’s approval for three new liaison arrangements. Eleven existing arrangements were expanded during the same period. At the end of the fiscal year, CSIS had 215 liaison arrangements with 128 countries. There were also five liaison arrangements with three international organizations.

Of the 215 arrangements currently in force, the Service considers 39 to be “dormant”—a dormant arrangement being one in which there has been no contact for one year or more. Liaison agreements become dormant for a number of reasons: a simple lack of

need to exchange information, concerns by the Service about the other agency's professional or human rights practices, or an assessment that the political situation in the other country is too unstable.

Ministerial Direction

In a major study presented in last year's audit report ("CSIS Liaison with Foreign Agencies" p. 20) the Committee expressed the hope that what we believed at the time was the imminent release of new Ministerial Direction on foreign arrangement would address some fundamental problems in the area. However, the Committee is once again constrained to merely anticipate the new policies and hope that they deal with some of the issues we had raised.

As of July 1999, no new Direction had been forthcoming from the Office of the Solicitor General. The Committee continues to regard the revised instructions as vital, particularly in the face of the rapid increase in the numbers of foreign agreements between CSIS and foreign agencies during the past several years, and the fact that critical elements of the existing direction are out-of-date.

During our review this year of several liaison arrangements, we noted that the Foreign Liaison and Visits Branch sometimes did not have timely access to operational information which could have had an impact on decisions to enter into certain liaison arrangements. Although we were ultimately satisfied with the outcome of the arrangements reviewed, the Committee will continue to monitor future new arrangements to assure ourselves that the Foreign Liaison Branch has received complete and timely information.

A Problematic Foreign Arrangement

The Committee sought clarification from the Service about a new relationship approved by the Minister in 1997-98. The foreign intelligence services of the country concerned were involved in combating domestic terrorist forces, and the government itself had a very poor human rights record. However, CSIS also confirmed to the Committee that it had satisfied itself as to the foreign agencies' overall reliability.

An issue that did generate a statement of concern by the Committee pertained to the proper identification of all parties to a foreign arrangement. Ministerial Direction requires that all the agencies involved in an arrangement be named. However, our review showed that a single generic name used in the agreement in fact represented several intelligence services belonging to the government of the foreign state—in the Committee's view, a contravention of Ministerial Direction. We have subsequently been informed that the Service intends to request from the Minister appropriate corrections to the arrangement. The Committee will follow-up on the matter.

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Collection of Foreign Intelligence

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Foreign intelligence refers to the collection and analysis of information about the "capabilities, intentions or activities" of a foreign state. Under section 16 of the *CSIS Act*, the Service may, at the written request of the

Minister of Foreign Affairs and International Trade or the Minister of National Defence—and with the approval of the Solicitor General—collect foreign intelligence. The *Act* provides that the collection of information must take place in Canada, and cannot be directed at Canadian citizens, permanent residents or Canadian companies.

Methodology of the Audit

The Committee employs various methods to audit the collection and use of foreign intelligence:

- review Ministers’ “requests for assistance”;
- examine all information about Canadians retained by CSIS for national security purposes; and,
- scrutinize all CSIS requests for information to the Communications Security Establishment (CSE).¹⁹

Our goals are to,

- assess CSIS involvement in section 16 requests to ensure compliance with the Memorandum of Understanding, the *CSIS Act*, and directions from the Federal Court;
- determine whether the Service has met the various legal tests required to collect information under section 16 operations; and,
- in general terms, assess whether the Service’s cooperation with the CSE is in compliance with the *CSIS Act*.

Findings of the Committee

Ministerial Requests

For the period under review the Committee noted two significant developments regarding

Ministers’ requests for assistance. The first was a change in policy regarding the length of time requests would have effect before being renewed or cancelled. In our 1996-97 Annual Report, the Committee expressed concern about the existence of “stale-dated” requests up to five years old. During the year under review, the Committee was informed that a one-year validity limit had been imposed on all requests submitted to CSIS.

The second development was operational in nature. As in last year’s audit, when we reviewed the requests for assistance requiring Federal Court warrants we identified some which did not contain an explicit prohibition against the targeting of Canadians, nor did they specify the circumstances under which Canadians might be subjected to incidental interception. Both provisions are required by the 1987 Memorandum of Understanding between the Service and requesting government departments. CSIS has informed the Committee that it had again raised the matter with the Government department which subsequently advised that it would begin including the prohibition clause in its request letters.

Federal Court Decision

In September 1997, Madame Justice Donna McGillis of the Federal Court ruled on the “visitor’s clause” contained in a section 12 warrant being requested by the Service. In her opinion, this clause constituted an unlawful delegation of authority to CSIS.²⁰ During the most recent year under review, the Federal Court again took issue with the discretionary authority of CSIS senior managers, this time in regard to a section 16 warrant. The Service adjusted the warrant

accordingly, and has since undertaken a full review of the terms and conditions set out in section 16 warrants generally.

As we stated last year, the Committee regards the approval of warrants as the sole prerogative of the Federal Court. It is the Committee's responsibility to ensure that the Service rigorously observes conditions imposed on it by the Court. We will continue to monitor the Service's policies and operational practices in respect to its use of warrant powers.

Retention of Foreign Intelligence

The Committee identified two instances of inappropriate retention of information. Both concerned documents that had no obvious foreign or security intelligence relevance. The Committee brought these cases to the attention of the Service.

Section 16 Information and the Communications Security Establishment (CSE)

The information that CSE routinely gives to CSIS is "minimized" in order to comply with the prohibition on the collection of information on Canadian nationals and Canadian companies. The Service may, under special circumstances request identities if it believes the information is relevant to an ongoing section 12 ("threats to security") investigation. The Committee regularly scrutinizes these requests to CSE to ensure that they are appropriate and that they comply with existing law and policy.

Of the requests made during the current reporting period, three drew the Committee's attention because, in our view, the circum-

stances and subjects could not be considered threats to national security. For example, one case pertained to a straightforward criminal matter not within the Service's mandate.

Management, Retention and Disposition of Files

Files are the essential currency of intelligence gathering. Each CSIS investigation and every approved target requires the creation of a file, and a system for making the information in it available to those designated within the Service. Balanced against this information-gathering apparatus is the clear restriction on CSIS set out in the *CSIS Act*, that it shall collect information "to the extent that it is strictly necessary." The Committee closely monitors on an annual basis the operational files held by the Service.

In this year's Annual Report, in addition to the information about files which we regularly report on in this section, we also conducted a special review of files that were inadvertently overlooked by the CSIS file management system. A report on the results of our inquiries can be found on page 32.

File Disposition

CSIS files are held according to predetermined retention and disposal schedules that are negotiated with the National Archivist. These define how long the files are to be retained after Service employees cease using them. When this period expires, the National Archives Requirements Unit (NARU) in CSIS consults with Service operations staff on whether to keep the file, destroy it, or

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send it to the National Archives.

During fiscal year 1998-99, NARU reviewed 25,948 files which had come to its attention through the regular archival “Bring Forward” (BF) system. Of the files that NARU and the operational staff reviewed, 20,294 were destroyed and 5,618 were retained. CSIS informed us that 36 files were identified as having archival value. They were removed from the active file holdings and will be sent to National Archives according to the established schedules.

New File Statistics

We compiled file statistics for the past three fiscal years and noted several interesting trends:

- an increase in numbers of files on foreign nationals visiting Canada where there was a counter terrorism concern;
- the number of files on right wing extremists continues to decline slightly; and,
- security screening files overall show the expected minor fluctuations, however, the number of files devoted to immigration and refugee screening has increased over the last three fiscal years.

The Committee is cautious about drawing too much from these observations. A decrease or increase in the number of files does not, of itself, presage a change in threats to national security. Instead, the variations may reflect individuals’ membership or group preferences, or alternatively, a shift in focus on the part of the Service. We will analyse any significant trends in greater depth should they prove to be extended.