

Section 2: Security Screening and Investigation of Complaints

A. Security Screening

In the context of the *CSIS Act*,²¹ the Service fulfills its security screening responsibilities in two different spheres: employment within the Federal Government when the position in question requires a security clearance, and security screenings for Canada's Immigration Program. Both activities involve the delivery of a service to other decision-makers in the form of security assessments.

For Federal employment, CSIS security assessments serve as the basis for determining an individual's suitability for access to classified information or assets. In immigration cases, Service assessments can be instrumental in Citizenship and Immigration Canada's decision to admit an individual into the country, and in the granting of permanent resident status or citizenship. More generally, intelligence gathered by the Service

forms the basis of immigration screening profiles used in processing applicants.

Security Screening Assessments in 1998-99

The number of government security screening assessments for this year was 31,885,²² with an average turnaround time of four days for a Level I, nine days for a Level II, and 111 days for a Level III. The Service also processed 26,364 requests under the Airport Restricted Access Area Clearance Program (ARAACP) which comes under the authority of Transport Canada. The Service provides its advice to its clients in the form of "briefs." According to statistics provided by CSIS, of the 58,249 assessments conducted in total, the Service issued no briefs recommending the denial of a clearance, and 13 "information" briefs.

Screening Arrangement with a Provincial Institution

The Solicitor General temporarily authorized the Service to conduct a limited number of checks of CSIS data banks concerning foreign specialists required to work for an agency

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."

of a provincial government. In such instances, the Service provides records checks and a security assessment but does not append a recommendation. The Service processed 70 requests resulting in one information brief.

Screening on Behalf of Foreign Agencies

The Service is authorized to enter into reciprocal arrangements with foreign agencies to provide security checks. These checks are provided on Canadians and other individuals who have resided in Canada. For the year under review, the Service processed 1,064 requests, 161 of which involved field investigations and resulted in 6 information briefs.

Immigration Security Screening Programs

The Service conducts security screening investigations and provides advice to the Minister of Citizenship and Immigration (CIC).

The Service's authority for immigration screening is derived from sections 14 and 15 of the *CSIS Act*. The nature of the Service's role²³ varies from information sharing (on matters concerning threats to the security of Canada) to assessments provided to CIC with respect to the inadmissibility classes of section 19 of the *Immigration Act*.

Immigration and Refugee Applications for Permanent Residence from Within Canada

CSIS has the sole responsibility for screening immigrants and refugees²⁴ who apply for permanent residence from within Canada. For the year under review, the Service received 30,945 requests for screening applicants under this program. CIC forwards the vast majority of these applications directly to CSIS for screening via an electronic data link from the CIC's Case Processing Centre (CPC) in Vegreville, Alberta. The average

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.

turn-around time for such applications is currently 11 days, 9 days for Canada-based electronic cases, and 96 days for paper cases.

Immigration and Refugee Applications for Permanent Residence from Outside Canada

Immigration and refugee applications for permanent residence that originate outside of Canada are managed by the Overseas Immigrant Screening Program. Under this Program, CSIS shares the responsibility for the security screening process with CIC officials abroad, usually the Immigration Program Managers.

As a general rule, CSIS only becomes involved in the immigration screening process if requested to do so by an Immigration Program Manager or upon receipt of adverse information about a case from established sources—a procedure that allows the Service to concentrate on the higher risk cases. The number of referrals to CSIS represents approximately 25 percent of the national volume. For the year under review, the Service received 21,576 requests for screening applicants under the Overseas Immigration Screening Program, 7,333 requests relating to applicants based in the United States, and 3,989 applicant files referred for consultation by CSIS Security Liaison Officers posted abroad.

Length of Time Taken for Security Screening

For the year under review, 50.3% of all immigration screening cases were completed in 43 days. Of the remaining 49.7%, the turn-around time was 92 days. Overall, 99.3%

of all immigration screening cases were completed in under one year.

Nature of the Service's Advice

During the period under review, the Service forwarded 128 briefs to CIC. Fifty-one of those were “information briefs” while the remaining 77 advised CIC that the person, in the view of the Service, was inadmissible to Canada on security grounds. Although the Committee has requested that the Service provide information on decisions that resulted from its advice, the Service has stated that because CIC considers a myriad of factors in deciding admissibility, it is not able to determine the impact of its advice on any individual decision.

Enforcement Information Index²⁵

EII, the CIC data bank, is designed to warn immigration officials abroad and alert officials at Canada’s points of entry about persons who may pose a security threat. Through this process, CSIS provides basic identifying data about individuals who could be the subject of enforcement action. During 1998-99, the Service supplied CIC with 132 names of known and suspected terrorists for addition to this index.

Point of Entry Alert System

Linked to the Enforcement Information Index, CSIS (through CIC and Revenue Canada) can issue a point-of-entry alert for any person of security concern whose arrival in Canada is thought to be imminent. The purpose is to allow CIC and Customs officials to determine that person’s admissibility. During 1998-99, the Service issued 15 point of entry alerts resulting in 8 interdictions. Three of the 15

The names of all applicants are sent to CSIS for cross-checking against names in the Security Screening Information System data base.

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.

were interviewed and allowed into Canada. The Service has no information indicating that the others actually attempted to enter.

CSIS, Citizenship Applications and the Alert List

In 1997, CIC instituted a mail-in system whereby all applications for citizenship are processed by the Case Processing Centre (CPC) in Sydney, Nova Scotia. As part of the tracing procedures, the names of all applicants are sent to CSIS through electronic data transfers for cross-checking against names in the Security Screening Information System data base. There are presently a number of names on an Alert list comprised of individuals who had come to the attention of CSIS through TARC-approved investigations, and while not yet citizens, have received landed immigrant status.

The vast majority of citizenship applications are processed in an expeditious manner with

the rest requiring additional analysis by the Service before it sends a recommendation to Citizenship authorities. In fiscal year 1998-99, CSIS received a total of 159,939 names from CIC. Out of these, 36 cases had resulted in information briefs; none were recommendations for denial.

The Solicitor General has approved the deferral of two cases, while a third was in the process of being examined for a deferral.²⁶

Section B. Investigation of Complaints

As distinct from the Review Committee's function to audit and review the Service's intelligence activities, we have the additional task of investigating complaints from the public about any CSIS action. Three areas fall within the Committee's purview:

Table 3
Complaints (1 April 1998 to 31 March 1999)

	New Complaints	Carried Over from 1997-98	Closed in 1998-99	Carried to 1999-2000
CSIS Activities	53	3	37	19
Security Clearances	0	1	0	1
Immigration	0	0	0	0
Citizenship	0	1	0	1
Human Rights	1	0	1	0

- As a quasi-judicial tribunal the Committee is empowered to consider and report on any matter having to do with federal security clearances, including complaints about denials of clearances to government employees and contractors.
- The Committee can investigate reports made by Government Ministers about persons in relation to citizenship and immigration, certain human rights matters, and organized crime.
- As stipulated in the *CSIS Act*, the Review Committee can receive at any time a complaint lodged by a person “with respect to any act or thing done by the Service.”

Findings on 1998-99 Complaints “With Respect to Any Act or Thing”

During the 1998-99 fiscal year, we received 53 new complaints under section 41 of the *CSIS Act* (“any act or thing”). We also completed our investigation into a section 42 complaint carried over from 1996-97 but the report was not completed in time to be included in this year’s Annual Report. Our investigation of a Ministerial Report under sections 19 and 20 of the *Citizenship Act* was further delayed by legal proceedings.

We completed our investigation of a matter referred by the Canadian Human Rights Commission and with the agreement of the concerned parties and the assistance of an expert from the Commission, are attempting to determine whether the allegation (in this instance involving alleged discrimination) is justified.

CSIS Activities (Section 41): Immigration-Related Complaints

The year under review was marked by an increase in the number of complaints with respect to CSIS’ activities in immigration security screening.²⁷ The complaints were diverse in nature: the fact that applicants were not notified in advance about security screening interviews, the nature of particular interviews, the types of questions posed and the manner in which they were posed, the accuracy of the reporting following an interview, the kind of “cooperation”²⁸ complainants claimed was expected of them, the presumed content of the Service’s brief resulting from the interview (presumed, since the applicant does not see the brief), the length of time taken by the Service to provide its advice to Immigration authorities, the Service’s allegedly overly broad definition of the words “member” and “terrorist organization,” and allegations that attempts were made 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.

CSIS to use the screening process in order to recruit individuals as sources.

The issues identified in the complaints were both complex and varied. While the Committee's inquiries into each complaint were not completed in time for the conclusions to be presented in this report, we have reached a number of conclusions about the obstacles we face in the process of reviewing the Service's role in immigration screening.

The first concerns the confusion that can occur because delays in any particular application can arise from several sources. It is often the case that applicants are without Counsel and are unfamiliar with the complaint procedures. In such cases, the Committee informs the individuals that they must first ascertain whether the delay is due to CSIS or to the Department of Citizenship and Immigration Canada.²⁹ If the former, the individual is required by statute to first submit a complaint to the Director of CSIS. Should the complainant receive an unsatisfactory response³⁰ or none at all, SIRC can then, and only then, become involved.

A second source of complexity which adds to the length of time required to inquire into immigration security screening matters is that the Service is not the mandated decision maker. The prime responsibility for the Immigration program lies with the Department of Citizenship and Immigration Canada, with the Service acting effectively in an advisory role. Since the Committee is empowered to investigate directly only CSIS activities, the determination of the impact of the Service's interviews and briefs on any particular

immigration application is time consuming and requires considerable investment of Committee resources.

Section 41: Complaints About CSIS Activities the Committee is Precluded From Investigating

We determined that two complaints received were not within our jurisdiction because the complainants were entitled to seek redress through other means set out in the *Public Service Staff Relations Act* and the *CSIS Act*. The individuals were so informed. Another case dealt with the complaints of a former Service employee. At the request of the Office of the Solicitor General the Committee reviewed the matter. The results of our inquiries are presented on page 30 of this report.

Complaints About CSIS Activities Determined to be Without Merit

The Committee reviewed twelve complaints about CSIS activities and in all cases determined that the Service was not involved in the alleged harassment. In an additional two cases, our investigations showed that allegations that CSIS has transmitted negative information to employers were unfounded.

Misdirected Complaints or Matters Sub Judice

Two complaints the Committee received were of a criminal nature and involved neither CSIS nor issues of national security. The Committee declined to take up either matter. In a third case, an individual complained to the Committee about the Service's decision not to meet with this individual who was then involved in a matter before the Courts. Upon

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reviewing the issue the Committee determined that the Service's decision was appropriate.

Incomplete Assessment

The Committee concluded that the Service had acted in conformity with current policy when it informed a department of government that it was not in a position to provide an accurate and meaningful security assessment since the complainant in question had resided in Canada for less than twelve months.

We did note, however, that current policy did allow for special circumstances in which a deputy head of department could elect to grant the lowest level of clearance (Confidential) to an employee or contractor despite an incomplete Service assessment.

Security Clearance Complaints

Denial of a Security Clearance

As noted above, the Committee's investigation of a section 42 complaint was completed during the year under review. Our review included testimony from the Deputy Head of the department which had elected to deny the security clearance. The results of our inquiries were communicated to the various parties.

Unequal Access to "Right of Review"

In last year's Annual Report the Committee once again made strong note of a situation concerning the right to legal redress in the security screening system. Currently, employees falling under the jurisdiction of the *Aerodrome Security Regulations* and the

Aeronautics Act have only limited access to redress in the event they are denied a security clearance. During the fiscal year under review the Government took no action to correct a situation the Committee stated some time ago should not be allowed to continue.

Findings on 1998-99 Ministerial Reports

Citizenship Refusals

In the continuing matter regarding the citizenship application of Ernst Zündel, Mr. Zündel sought leave to appeal a 1997 decision by the Federal Court of Appeal which ruled that the Committee did have the right to investigate Mr. Zündel's case. The Supreme Court denied such leave on 30 April 1998.

Since the recommencement of our investigation, Counsel for Mr. Zündel applied for judicial review of a certain procedural notice of the investigating Member. Following a motion by the Attorney General of Canada to quash the application for review, Justice McKeown of the Federal Court on 18 June 1999 rejected Mr. Zündel's application. The Committee has since received notice of Mr. Zündel's intention to appeal this latest decision.

Ministerial Report Pursuant to the *Immigration Act*

The Committee received no Ministerial Reports of this type during 1998-99. A judicial review of a case involving a Ministerial Report received in 1996-97 is scheduled to be heard in August 1999 by the Federal Court.³¹

Federal Court of Appeal Decision

In a judgment delivered on 19 July 1999, the Federal Court of Appeal disposed of the judicial review of a decision the Committee had rendered in 1988. At that time, the Committee concluded that the subject individual was a person described in paragraph 19 (1) (g) of the *Immigration Act*: a person whom there are reasonable grounds to believe is likely to engage in acts of violence that would or might endanger the lives or safety of persons in Canada, or is likely to participate in the unlawful activities of an organization that is likely to engage in such acts.

The Committee had also recommended that a certificate be issued by the Governor in Council under subsection 40(1) of the *Immigration Act*, leading ultimately to the applicant's deportation from Canada. In a subsequent application for judicial review, the applicant challenged not only the conclusion of the Committee but its processes and procedures as well.

In its ruling on the judicial review, the Court concluded that the application should be dismissed substantially for the reasons given by the Supreme Court in *Chiarelli v. Canada (Minister of Employment and Immigration)*. The panel of Justices was not persuaded by the applicant's arguments that there were errors in previous decisions which had found that the Review Committee had "diligently and carefully considered the interest of the applicant in disclosure (of confidential documents)."

As in *Chiarelli* the Court stated that a finding had been made by the Committee that the applicant breached an essential condition of remaining in Canada and that the finding was in accordance with the principles of fundamental justice. The Court also concluded that the applicant's possible deportation was not due to a criminal conviction for a rather minor offence, but rather because he represented a danger to Canadians. The Court's ruling took pains to distinguish this case from that of *Al Yamani v. Canada (Solicitor General)* wherein a clause of the *Immigration Act* was determined to be in violation of the *Charter of Rights and Freedoms*. The Court was of the view that the Committee had not come to an unreasonable conclusion respecting the individual.

Canadian Human Rights Commission Referrals

During the year under review the Committee received one referral from the Canadian Human Rights Commission. Acting within the time constraints set out under the *Canadian Human Rights Act*, we conducted our investigation and reported to the Canadian Human Rights Commission, the Minister concerned, and the Director of CSIS.

We determined that the Minister's conclusion that providing certain information under the procedures of the particular human rights complaint at issue would reveal classified information was correct in fact and in law.

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