

## 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 give effect to 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

Section 38(a)(ii) of the *CSIS Act*, directs the Committee to review Direction provided by the Solicitor General to the Service under subsection 6(2) of the *Act*. Ministerial Directions govern certain types of CSIS investigations in potentially sensitive areas, such as investigations on university campuses.

There are three elements to 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. Our interest in all cases is to ensure that the relevant Ministerial Direction is adequately articulated and that there has been full compliance on the part of the Service.

There were two new Ministerial Directions issued during the period under review.

#### National Requirements for Security Intelligence 1998-99

National Requirements contain general direction from Cabinet as to where CSIS should focus its investigative efforts, as well as guidance on the Service's collection, analysis, and advisory responsibilities. For 1998-99, the National Requirements set out priorities for CSIS in eight areas: counter terrorism, counter intelligence, security screening, foreign intelligence support, foreign influenced activities, environmental scanning, intelligence liaison, and technology development.

#### New Areas of Interest

The last four areas represent a significant departure from past Directions which have typically identified only the first four. Specifically, the 1998-99 National Requirements direct the Service,

- to investigate *foreign influenced activities* detrimental to Canadian interests;<sup>32</sup>
- to monitor, through *environmental scanning*, emerging threats to Canada that have the potential to become significant domestic problems, and to provide advice to Government accordingly;
- to maintain *intelligence liaison* relationships with its partners in an effort to persuade

former adversaries that their security needs can be met through liaison and cooperation rather than through the conduct of “hostile foreign intelligence activity in Canada.”; and,

- to anticipate the impact of new and emerging *technology developments* on its ability to effectively collect, process, and analyze intelligence.

### Changed Emphasis in Existing Areas of Interest

In addition to these wholly new areas of interest, the 1998-99 *National Requirements* modified several existing ones. With respect to transnational criminal activity, the Minister wrote that CSIS should focus on the “increased health and welfare costs caused by the consumption and trade of illegal drugs as well as erosion of the tax base due to unreported illegal business transactions.” In the Committee’s view, this change in emphasis appears to broaden the already wide scope of CSIS activities in this sector and would seem to add to the ongoing debate about the Service’s role in combating international organized crime. (See “Review of Transnational Criminal Activity” p. 5)

Finally, under the category of counter intelligence, the Minister also instructed the Service “to monitor and investigate attacks on information operations in so far as they pose a threat to the security of Canada.”

### Rules Governing the Use of Sources

In late 1998, the Minister issued an addendum to the October 1986 Ministerial Direction on the use of government officials as confidential sources of information and assistance.

The addendum extended the rules governing the recruitment of Federal Government employees as CSIS sources to all employees of Parliament and Parliamentarians.

The 1986 rules applying to Federal employees require the Service to take certain actions before recruiting an employee as a source. They also make provision for the Minister to waive that requirement if CSIS convinces him or her of an operational necessity to do so. Since neither staff of the Parliament of Canada nor Parliamentarians are Federal employees, the new Direction instead requires that in each instance CSIS must consult the Solicitor General before recruitment. The Committee will monitor the implementation of the new policy and the Service’s adherence to the protocol which governs it.

### Changes in Service Operational Policies and Instructions to Officers

The CSIS *Operational Policy Manual*, derived in part from the Service’s interpretation of Ministerial Direction, is intended as a guide and operational framework for CSIS 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. Operational policies, some of which are sensitive and potentially intrusive, must comply with Ministerial Direction, the *CSIS Act*, the *Canadian Human Rights Act* and other relevant legislation.

In fiscal year 1998-99, the Service produced one new policy and made several significant amendments to existing policies.

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#### Advice on Threats

Government Security Policy requires Government departments and agencies to safeguard their classified information and assets, and to conduct the Threat and Risk Assessments necessary to that end. The new CSIS policy outlines the Service's responsibilities in providing, upon request, advice to client departments and agencies on any known, suspected or potential threats (as defined under section 2 of the *CSIS Act*) directed against clients' assets.

#### Physical Surveillance

CSIS made significant amendments to the operational policy applying to physical surveillance. The revised sections are intended to make policy more explicit and intelligible, clearly outlining the principles, responsibilities, procedures, and approval mechanisms necessary for all physical surveillance operations undertaken by the Service.

#### Other Changes

We noted two other amendments to existing policies. The first pertained to the collection of foreign intelligence under section 16 of the *CSIS Act*, and addressed the requirements to separately report information if the Service retains information about threats to the security of Canada as provided under section 12 of the Act. The second amended the rules governing certain Service practices.

#### Disclosure of Information in the Public and in the National Interest

##### In the Public Interest

Section 19 of the *CSIS Act* prohibits the Service from releasing information collected

in its investigations, except in specific circumstances. Under one circumstance, explicitly referred to in 19(2)(d) of 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.

There had been no releases under this section of the *CSIS Act* until 1998-99, when all Federal Government departments and agencies were asked to facilitate the RCMP Public Complaints Commission (PCC) inquiry into police conduct at APEC<sup>33</sup> by providing all relevant information in their possession. CSIS identified 66 documents and one video<sup>34</sup> as possibly having some relevance. The Director sought and obtained the Solicitor General's authority to permit PCC counsel to view the 67 items.

The PCC counsel's review identified 17 items that were of interest. In July 1998, the Minister authorized the release of 14 of them; the remaining three were not released on national security grounds.

The *CSIS Act*, requires the Director to provide us with a report of all disclosures in the public interest. On 10 June 1999—almost one year after the disclosures—we received the Director's formal report from CSIS.

We confirmed that the Minister had indeed authorized the release of the 14 items, and concurred that the public interest in each case clearly outweighed the privacy considerations arising from that disclosure. However, we found the delay in providing the Committee

with the report excessive. We have so advised the Director of CSIS.

#### In the National Interest

Under the Service's interpretation of its mandate, it holds that, acting as the Minister's agent CSIS can disclose information in the "national interest." 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. CSIS policy stipulates that the Committee be informed whenever such disclosures take place. There were none in 1998-99.

#### Governor in Council Regulations and Appointments

Under section 8(4) of the *CSIS Act*, the Governor in Council may make regulations concerning the powers of the Director of CSIS, appointments and other personnel matters. No such regulations were issued in 1997-98.

#### Annual Report of the Director of CSIS

The CSIS Director's Annual Report to the Solicitor General comments in some detail on the Service's operational activities for the preceding fiscal year. Among the key functions of the Committee is the review of this report.

Last year, the Committee did not receive the Director's report in time for inclusion in our 1997-98 audit report. Therefore, we present the review here.

#### Director's Report for 1997-98

From the Committee's perspective, the salient points of the Director's Annual Report of 1997-98 were the following:

- *Public safety*  
Public safety remained the highest priority for the Service and represented 60 percent of the more than one thousand active investigations in the period April 1997 through March 1998. Terrorism linked to Asian and Middle Eastern conflicts was a major focus of the Service's efforts.

#### CSIS Role in Preventing Politically Motivated Violence

CSIS plays a pivotal role in Canada's defence against the possible threats posed by groups associated with politically motivated violence. The "threats to the security of Canada" which it is specifically charged to investigate include "activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state..." [section 2(c), *CSIS Act*]

In addition to informing the Government in general about the nature of security threats to Canada, CSIS' intelligence and advice is specifically directed at several government departments or agencies. The information can form the basis for immigration screening profiles used in processing immigrants. In specific cases, CSIS advice can play an instrumental role in determining the admissibility of an applicant, or in the denial of citizenship. Security intelligence may also serve as a basis for determining an individual's suitability to have access to classified information, as well as assisting the police in crime prevention and in criminal prosecutions.

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- *National security*  
In 1997-98, CSIS initiated a program to understand and evaluate the threat posed to national security by foreign agents who could exploit vulnerabilities in Canada's computer and telecommunications networks.
- *Security screening*  
In 1997-98, the number of requests received by the Security Screening Branch from domestic and foreign agencies increased dramatically and during the last 3 years has almost tripled.<sup>35</sup>
- *Foreign intelligence*  
The Service effectively increased its output of foreign intelligence reports for other Federal Government departments in fiscal year 1997-98.
- *Foreign liaison*  
In 1997-98, CSIS developed and presented its first training course for foreign intelligence services.
- *Funding*  
The funding of a CSIS technical development program was terminated in 1997-98. The Director stated that given ongoing developments in communications technology, the absence of such a program would erode the quality of advice the Service could give to government in the future.

#### SIRC Comments

In the Committee's view, the Director's Annual Report for 1997-98 was a good overview of CSIS activities, and in contrast

with previous reports, provided more details about Service investigations. However, the Report failed to address some issues we regard as important:

- The report was silent on the threat posed by the use of chemical and biological weapons for terrorist purposes. We believe CSIS should report its findings on this threat to public safety.
- Whereas a Ministerial Direction specifically mentioned the importance of investigating a certain form of espionage, as measured by the Director's report, this area did not appear to be a high priority for the Service.
- The report does not address the material increase in the number of certain targeting authorizations conducted at the most intrusive level. We believe this is important information which should be conveyed to the Solicitor General.
- The report does not devote specific attention to joint operations with foreign services. The Committee is of the view that such operations are directly relevant to issues of Ministerial authority and thus merit appropriate attention from the Director.
- We saw no discussion of various recent legal judgements and their actual or potential impact on CSIS operations. For example, the report does not mention the Federal Court's decision on the use of the "visitor's clause" (also known as the McGillis decision, see p. 47 of our 1997-98 report) or its rejection of two Service applications for warrants in 1997-98.

### Certificates of the Inspector General

The Inspector General of CSIS reports to the Solicitor General and functions effectively as his internal auditor of CSIS, reviewing the operational activities of the Service and monitoring compliance with its policies. Every year the Inspector General must submit to the Minister a Certificate stating the “extent to which (he or she) is satisfied,” with the Director’s report on the operational activities of the Service and informing the Minister of any instances of CSIS having failed to comply with the *Act* or Ministerial Direction, or that involved an unreasonable or unnecessary exercise of powers. The Minister sends a copy of the Certificate to the Security Intelligence Review Committee.

The Inspector General’s Certificates for 1996 and 1997 were briefly reviewed in last year’s Annual Report. We commented that some of the issues raised in the Certificates were complex and required more time for study than was available to us before the deadline for the 1997-1998 Annual Report. The most complex of these matters—“issue-based” targeting—the Committee decided was of such importance as to warrant special consideration. The results of our review can be found on page 33 of this report.

The other issues addressed by the Inspector General in the 1996 and 1997 Certificates were technically complex but did not involve the general philosophy or principles associated with targeting or investigating threats to the security of Canada.

The Inspector General noted several areas where, in his view, the letter of the law as

specified in Ministerial Direction had not been followed in a precise or rigorous enough manner. Though we have not investigated the particular cases cited by the Inspector General, we certainly agree with the proposition that the rationale for targeting any person or any other action involving CSIS’ extensive powers should be fully documented in CSIS files. We also agree that Ministerial Direction should be followed both in letter and in spirit. Where this turns out to be impractical or administratively very cumbersome, CSIS should attempt to convince the Minister that his or her Direction could reasonably be amended.

SIRC has not received a 1998 Certificate from the Inspector General because the position was vacant from June 1998 until September this year.

### Unlawful Conduct

Under section 20(2) of the *CSIS Act*, the Director of CSIS is to submit a report to the Minister when, in his opinion, a CSIS employee may have 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 1998-99, we received one report of possible unlawful conduct by an employee of CSIS. No decision has been received yet from the Attorney General of Canada concerning this case.

In last year’s report, we commented on two cases of unlawful conduct dating back to 1989 and 1990 which remained unresolved.

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**We agree that the rationale for targeting any person or any other action involving CSIS’ extensive powers should be fully documented.**

We have since been informed that the cases were brought to conclusion with no charges being laid by the Attorney General of Canada against the employees in question.

We also commented on another case of unlawful conduct dating back to 1997. Following a criminal investigation, CSIS elected to conduct its own internal inquiry. The Committee will comment on the matter upon its conclusion.

#### **SIRC Consultations and Inquiries**

The Committee is a key part of the CSIS accountability structure. In 1998-99 we undertook specific activities in this respect in the following areas:

##### **Tracking and Timing of Formal Inquiries**

In our review function, we send questions to CSIS to request information and/or documents about its activities. In the 1998-99 fiscal year (April 1, 1998 to March 31, 1999) we directed 126 formal inquiries to the Service. The average time CSIS took to respond to a formal inquiry was 38.5 days (essentially unchanged from last year)—a figure that does not include questions arising out of complaint cases.

In addition to formal questions, the Committee makes informal requests of CSIS. In all such cases for the year under review, the Service responded expeditiously to what were sometimes urgent queries.

##### **Briefings**

At its monthly meetings, the Chair and Committee Members meet with government officials to keep open the lines of communication

and stay abreast of new developments. When meetings of the Review Committee are held outside of Ottawa, Members visit CSIS regional offices. The Committee met with senior CSIS regional managers in Montreal in September 1998, in Vancouver in February 1999, and in Toronto in April 1999. The balance of the Committee's meetings were held in Ottawa.

##### **SIRC Activities Additional to CSIS Review**

In October 1998, Committee Members met with the Director General of the Security and Intelligence Bureau and the Director of Foreign Intelligence Division from the Department of Foreign Affairs and International Trade. The Committee met with the Communications Security Establishment Commissioner in November 1998.

In November 1998, at the invitation of the Swedish Government, the Chair met with the President of Svea Court of Appeal in Stockholm, and with members of the Commission of Inquiry into the Swedish Intelligence Service. Also, the Chair and the Executive Director travelled to the United Kingdom in November 1998 to meet with the Intelligence and Security Coordinator, the UK Parliament's Intelligence and Security Committee, and the Deputy Head of MI5.

The Committee also met with the Solicitor General in May 1999.

At the end of June 1999, the Committee hosted an international conference of heads of intelligence review agencies. The conference is discussed on page 67.

### Special Reports

Under section 54 of the Act, the Committee can be asked by the Minister to report to him or her on any matter relating to the performance and functions of the Service. In 1998-99, we submitted one such study to the Minister entitled, *Allegations by a Former CSIS Employee*. Details can be found on page 30.

## B. Inside the Security Intelligence Review Committee

On 18 June 1999, the Prime Minister of Canada announced the appointments of the Honourable Ray Speaker, P.C., and the Honourable Frank McKenna, P.C. to SIRC. These appointments mark the first time since November 1997 that the Committee has had its full complement of Members.

On 29 July 1999, the Solicitor General of Canada announced the appointment of Maurice Archdeacon as the Inspector General of CSIS. Mr. Archdeacon had been SIRC's Executive Director since its establishment in 1985.

### Intelligence Review Agencies Conference

In June 1999 SIRC hosted an international conference in Ottawa to mark its 15<sup>th</sup> anniversary. The conference, "Review and Oversight in the New Millennium: Challenges of a Multipolar World" was attended by current and former SIRC Members, and the heads of review agencies from Canada, Australia, New Zealand, the United Kingdom, Belgium, South Africa, and the United States.

This was the second conference of its type, the first having been held in Canberra, Australia in November 1997. The Ottawa meeting provided an opportunity for the

**Table 4**  
**SIRC Budget 1998-99\***

	1998-99	1997-98
Personnel	925,000	831,000
Goods and Services	589,000	575,000
Total Operating Expenses	1,514,000	1,406,000

Source: 1999-2000 Estimates, Part III, Section IV.

\* Includes supplementary budget



delegates to address the challenges encountered in their respective jurisdictions, and to share problem-solving strategies.

The two-day conference was comprised of a series of working sessions, and other planned activities. For example, Members of the Parliamentary Standing Committee on Justice and Human Rights and Members of the Special Senate Committee on Counter Terrorism discussed legislators' relationships with review bodies, and invited journalists specializing in security intelligence issues participated in a working session on "Relationships with the Media."

The participants included Claude Bisson, Commissioner of the Communications Security Establishment; Senator William Kelly, Chair of the Senate Special Committee on Security and Intelligence; Ward Elcock, Director of CSIS; Jacques Saada, M.P., Parliamentary Secretary to the Solicitor General of Canada, and a Member of the Parliamentary Standing Committee on Justice and Human Rights; John Maloney, M.P., Chair of the Standing Committee on Justice and Human Rights; and other Members of that Committee: Derek Lee, M.P., and Ivan Grosse, M.P.

### **Symposia**

In January 1999, the Committee's former Project Leader was a guest speaker at a conference organized by the Comité permanent de contrôle des Services de Renseignement in Brussels. Research Staff participated in the conference and the annual general meeting of the Canadian Association for Security and Intelligence Studies (CASIS) in Ottawa in June 1998.

### **Accounting to Parliament**

On September 1, 1998, the Hon. Paule Gauthier, SIRC Chair, the Hon. Bob Rae, Committee Member, SIRC's Executive Director and Deputy Executive Director appeared before the Special Senate Committee on Security and Intelligence to answer questions about the role and functions of the Review Committee.

### **Staying in Touch with Canadians**

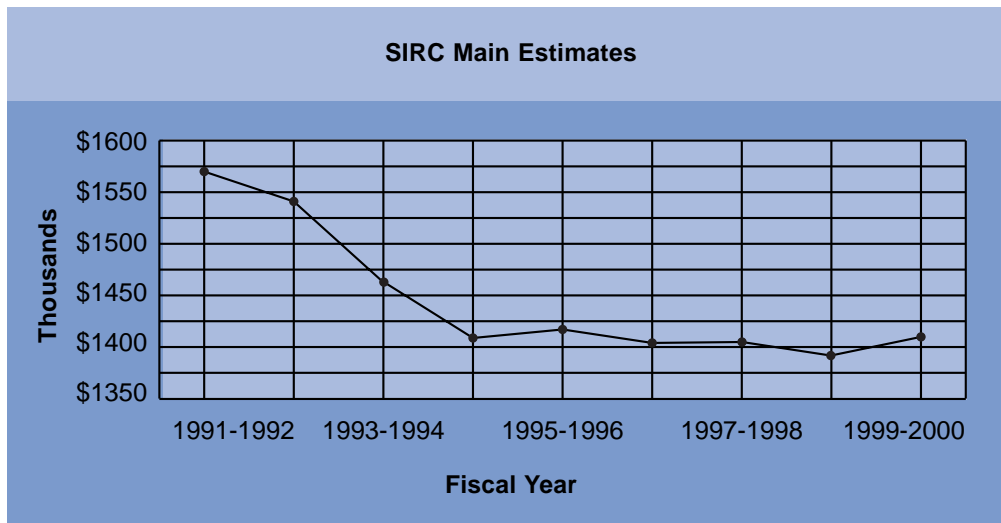
#### **SIRC on the Internet**

Since its debut on the Internet in October 1996, the SIRC web site ([www.sirc-csars.gc.ca](http://www.sirc-csars.gc.ca)) has received almost 600,000 visits. In the Spring of 1999, the Committee used its site and the Public Service Commission site to advertise job competitions for two research positions; we received almost four hundred applications.

All SIRC Annual Reports, dating back to 1984-85 when the Committee was established, are now accessible through the web site. The list of Committee studies has been updated and we have added hot links to other sites of interest. The site also sets out procedures for filing complaints about CSIS activities and the denial of security clearances, as described in sections 41 and 42 of the *CSIS Act*.

#### **Impact of Budget Reductions**

Government-wide budget reductions continue to have an impact on the Committee's research functions. The investigation of complaints is the most expensive area of discretionary spending, and must, therefore, bear the brunt of recent budget cuts. To deal with the reductions, the Committee continues to rely



on the expertise of our staff Legal Counsel rather than retaining outside lawyers. Pre-hearing meetings also help the Committee make better use of resources by paving the way for hearings that are more focused and efficient. At the same time, the Committee is determined both to avoid increasing the time required to handle complaints and to maintain the high quality of its reports. The Committee believes the steps outlined above will allow SIRC to continue to improve its performance while meeting its responsibilities to Parliament and the public at lower cost.

The Committee has too small a staff to undertake “year 2000” information technology research on its own and thus has engaged outside specialists for this vital work. It is the Committee’s policy to remain informed about advances in information technology so as to continue the steady increase in staff productivity seen over the last six years.

#### **Personnel**

The Committee has a 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 sensitive and highly-classified material using special security procedures.

At its monthly meetings, the members of the Committee decide formally on the research and other activities they wish to pursue, and set priorities for the staff. Management of the day-to-day operations is delegated to the Executive Director with direction when necessary from the Chair in her role as the Chief Executive Officer of the organization.