

## Section 2

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### Investigation of Complaints



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### Complaints Case Histories

This section summarizes complaint cases submitted to the Review Committee on which decisions were reached during the past year. Not addressed here are complaints that were handled through administrative review, were misdirected or were deemed to be outside the Committee's jurisdiction. The summaries are edited to protect the privacy of complainants and to prevent disclosure of classified information.

Where appropriate, complaints are investigated through quasi-judicial hearings presided over by a Member of the Committee. After the hearings are complete, the presiding member issues a report to both the Solicitor General and the Director of CSIS. After any information with national security implications is removed, the complainant also is advised in writing of the findings.

Pursuant to the *CSIS Act*, the Committee reported on seven complaint cases reached during the period under review: three were complaints lodged in accordance with section 41—"any act or thing"; two were section 42 complaints (denial of security clearance); two were referrals from the Canadian Human Rights Commission (CHRC) (*see* Table 2).

**Table 2**  
**Disposition of Complaints\***

Status of Complaints and Reports	1999–2000	2000–2001	2001–2002
Carried over	20	24	41
New	55	52	45
<b>Total</b>	<b>75</b>	<b>76</b>	<b>86</b>
Closed	51	35	69
Carried forward	24	41	17
Orders and reports arising from complaints	4	3	16

\* Table 2 reflects all complaints received by the Committee. Not all complaints received require further inquiries by the Committee nor does every complaint result in an investigation.

## Reports of Decisions

### SECTION 41—“ANY ACT OR THING”

#### CASE #1: Allegations of Improper Conduct

The complainant alleged that CSIS had improperly used its resources to assist a former employee. Specifically, the complaint alleged that the Service had improperly collected information, disclosed information to a third party in violation of CSIS policy, deliberately misled a court proceeding and attempted to intimidate the complainant.

The Committee determined that there was no foundation to any of the complainant’s allegations of wrongdoing by the Service. The Committee made two recommendations for modifying CSIS policy designed to avoid circumstances in the future that might lead to similar such complaints.

#### CASE #2: Allegations of Improper Conduct and Violation of Privacy

The complainant alleged that in receiving and retaining without consent items of personal property belonging to the complainant, the Service acted beyond its authority, without just cause and in violation of the complainant’s privacy rights.

### Complaints About CSIS Activities under Section 41

Under the provisions of section 41 of the *CSIS Act*, the Review Committee must investigate complaints made by “any person” with respect to “any act or thing done by the Service.” Before the Committee investigates, two conditions must be met:

- 1) The complainant must first have complained to the Director of CSIS and not received a response within a reasonable period of time (about 30 days) or the complainant must be dissatisfied with the Director’s response.
- 2) The Committee must be satisfied that the complaint is not trivial, frivolous, vexatious or made in bad faith.

In addition, under section 41(2) of the Act, the Committee cannot investigate a complaint that can otherwise be channelled through existing grievance procedures of the *CSIS Act* or the *Public Service Staff Relations Act*.

The Committee learned that during an investigation the Service had recovered certain items belonging to the complainant. Without informing the complainant, the Service retained possession of the items for several days before returning them to the owner. The Committee found that the complainant's contention that CSIS had acted inappropriately and outside the normal functions of its duties was justified. The Service acknowledged to the Committee that the recovery and return of the complainant's property could have been handled in a manner more sensitive to the complainant's concerns and needs.

The Committee recommended that the Service address the lack of policy guidelines regarding the retention of personal items that come into its possession. The Service has since acted on the recommendation.

### **CASE #3: Allegations of an Improper Investigation of Lawful Advocacy, Protest and Dissent**

The complainant alleged that the Service was illegally and improperly investigating a group of persons involved in lawful advocacy, protest and dissent. The complainant requested that the Service make public any evidence in its possession suggesting the involvement by this and other like-minded organizations in activities posing a threat to the security of Canada.

In correspondence with the complainant prior to the filing of the complaint, CSIS stated that it did not make a practice of investigating lawful advocacy, protest and dissent. The Service declined to confirm or deny the existence of an investigation of the group in question. As a general rule, CSIS neither confirms nor denies the existence of any particular investigation.

The Committee found no evidence that the Service was involved in the activities alleged by the complainant.

## **SECTION 42—DENIAL OF SECURITY CLEARANCE**

### **CASE #1: Denial of Security Clearance Based on Loyalty**

The complainant, an employee of a federal institution, was denied a level 2 (Secret) security clearance. As a result, the complainant's employment with the federal institution was terminated. The Deputy Head of the federal institution based the decision to deny the complainant's security clearance on advice received from CSIS. The employee elected to contest the denial of clearance by filing a complaint under section 42 of the *CSIS Act*.

In its investigation, the Committee learned that the Service's advice was based on its assessment that the complainant was engaged in activities that constituted threats to the security of Canada and that the complainant associated with persons or groups regarded as security threats. The Committee found the Service's information to be credible and that the decision of the Deputy Head to deny the security clearance met the standard of "reasonable grounds to believe" as required by Government Security Policy.

The case raised two subsidiary issues for the Committee. Some CSIS investigators employed a certain format for preparing interview reports. The Committee recommended that this particular format be revised or abandoned. The Committee also reiterated its view (*see SIRC Report 1999–2000*, p. 73) that CSIS could mitigate the potential for conflicting accounts of security clearance interviews either by recording them and retaining the tapes on file, or by preparing an interview summary for the interviewee's comment and signature.

#### **CASE #2: Denial of Security Clearance Based on Loyalty**

The complainant was a former employee of a federal institution whose application for a level 2 (Secret) security clearance was denied. As a result, the complainant's

### **Complaints About Denial of Security Clearances under Section 42**

With respect to decisions to deny security clearances, section 42 of the *CSIS Act* sets out three situations in which a complaint can be made to the Committee:

- 1) any person refused federal employment because a security clearance has been denied;
- 2) any federal employee who is dismissed, demoted, transferred or denied a transfer or promotion, for the same reason; and
- 3) anyone refused a contract to supply goods and services to the government for the same reason.

A complaint under section 42 of the Act must be filed with SIRC within 30 days of the denial of the security clearance. The Committee can extend this period if valid reasons are presented.

*For more information on how to make a complaint to SIRC, please visit our website at [www.sirc-csars.gc.ca](http://www.sirc-csars.gc.ca)*

employment with the federal institution was terminated at which time the complainant contested the denial via a complaint to the Committee under section 42 of the *CSIS Act*.

Following a review of the evidence gathered by the Service to justify its advice to deny a security clearance, the Committee agreed that the complainant's loyalty to Canada was extremely doubtful. The Committee recommended that the decision of the Deputy Head of the federal institution to deny the clearance based on this advice be upheld.

## CANADIAN HUMAN RIGHTS COMMISSION REFERRALS

### CASE #1: Allegations of Discrimination Based on Gender and Ethnic Origin

The case was a referral from the CHRC of a discrimination complaint by a group of 12 current and former employees of CSIS. The complainants alleged that they had been subject to discrimination by their employer because of their gender and their ethnic origin.

The complainants asserted that their exclusion from positions that paid a higher salary for similar work amounted to gender and ethnic discrimination. For its part, the Service maintained that the higher-paying positions required a particular skill that the complainants did not possess.

With respect to the complaint of sexual discrimination, the Committee found that the complainants had failed to make a *prima facie* case that CSIS had discriminated against them based on gender. With respect to the complaint of ethnic discrimination, the Committee found that here too, the complainants had failed to make a *prima facie* case.

Based on the evidence presented to it, the Committee concluded that the salary bonus afforded to those employees with the requisite particular skill was based on a *bona fide* occupational requirement, and that there was no discrimination by the employer. The Committee provided the CHRC with its report. The CHRC will render a decision on the matter.

### CASE #2: Allegations of Discrimination Based on Ethnic Origin

The complaint alleged that because the complainant was a member of an ethnic minority, CSIS had treated the individual in an adverse and discriminatory manner and, through its actions, caused damage and prejudice to the complainant's

personal and professional life. The complainant maintained that the Service had conducted surveillance; had interrogated employers, colleagues and friends; and had caused the complainant to lose employment on several occasions.

From its investigation, the Committee determined that the Service had in fact contacted a former employer as well as an acquaintance of the complainant in an effort to locate the individual for an interview. However, the Committee saw no evidence that these contacts were the result of discrimination of any kind. Nor could the Committee find any evidence that these contacts resulted in prejudice to the complainant's employment status. The Committee concluded that the allegations of discrimination were without foundation. The Committee provided the CHRC with its report. The CHRC will render a decision on the matter.