Security Screening and Investigation of Complaints

The Committee's enabling legislation—the *CSIS Act*—gives it a dual mandate: to review all CSIS activities and to investigate any complaints made about its activities. This section of the report deals with the second of the Committee's main responsibilities.

A. Security Screening

The Service has the authority, under section 15 of the *CSIS Act*, to conduct investigations in order to provide security assessments to departments and agencies of the Federal and provincial governments (section 13); the government of a foreign state (section 13); and the Minister of Citizenship and Immigration (section 14).

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.

SECURITY SCREENING FOR FEDERAL EMPLOYMENT

1999–2000 Key Statistics

- The number of security screening assessments rendered under the Government Security Program for Level I, II and III clearances totaled 33 357, with an average turnaround time of 8 days for a Level I assessment, 9 days for Level II and 72 days for Level III.

- The greatest number of the 4599 field investigations was required by the Department of National Defence, followed by Foreign Affairs and International Trade, CSIS, Public Works and Government Services, Communications Security Establishment, Privy Council Office and Citizenship and Immigration Canada.

- The Service also gave 25 160 assessments for the Airport Restricted Access Area Clearance Program (ARAACP), which is under the authority of Transport Canada. The average turnaround time for an ARAACP request was 4 days.

- Of the 58 517 assessments rendered in total, the Service issued 12 government briefs. Three recommended denial of a clearance and 9 were "information briefs."

- The three government denial briefs were all in relation to Level II clearances in three separate Federal Government departments. Two of the individuals concerned exercised their right of review by lodging a complaint before the Committee pursuant to section 42 of the *CSIS Act*.

New Security Screening Procedures for the "Parliamentary Precinct"

Under the Government Security Policy (GSP), CSIS is responsible for conducting security screening investigations for all Federal Government departments except the RCMP. Prior to 1998, Parliament—not being a government department—relied on the RCMP to provide criminal records checks as there were no CSIS records checks done for employees of Parliament. On the basis of public safety, checks for Parliamentary employees are now conducted under the Security Accreditation Checks Program. On March 1, 2000, the Service commenced security records checks for prospective employees of the Senate and independent contractors working for the Senate.

With the RCMP acting as intermediary, Parliamentary employees are subject to the Security Accreditation Checks Program procedures. Security accreditations granted under the new procedures are valid for five

years and are not transferable to other government departments.

The Committee was concerned to learn that, as with airport employees subject to the Airport Restricted Access Area Clearance Program (ARAACP), employees of the new Parliamentary Precinct will not have the right to bring a complaint about security screening to the Review Committee. The Committee has repeatedly stated its view that all persons—regardless of employment status—subject to the potential impact of adverse information collected by CSIS during security screening investigations should have access to redress through the Review Committee.

IMMIGRATION SECURITY SCREENING PROGRAMS

Under the authority of sections 14 and 15 of the *CSIS Act*, the Service conducts security screening investigations and provides advice to the Minister of Citizenship and Immigration Canada (CIC). Generally speaking, the Service's assistance takes the form of information-sharing on matters concerning threats to the security of Canada as defined in section 2 of the *CSIS Act* and the form of "assessments" with respect to the inadmissibility classes of section 19 of the *Immigration Act*.

Applications for Permanent Residence from Within Canada

The Service has the sole responsibility for screening immigrants and refugees who apply for permanent residence status from within Canada. In 1999–2000, the Service received 52 742 requests[21] for screening applicants under this program. The average turn-around time for screenings was 21 days—18 days for electronic applications and 94 days for paper applications.

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 security screening with CIC officials abroad. As a general rule, CSIS only becomes involved in the screening process if requested to do so by the Immigration Program Manager (IPM) or upon receipt of adverse information about a case from established sources—an arrangement that allows the Service to concentrate on higher risk cases.

In 1999–2000, the Service received 24 493 requests to screen offshore applicants and 4415 applicant files were referred to CSIS Security Liaison Officers (SLO) for consultation.

Citizenship Applications and the Alert List

As part of the citizenship application process the Service receives electronic trace requests from CIC's Case Processing Centre in Sydney, Nova Scotia. The names of citizenship applicants are cross-checked against the names in the Security Screening Information System database. The Service maintains an Alert List comprised of individuals who have come to the attention of CSIS through TARC-approved investigations and who have received landed immigrant status.

In 1999–2000 the Service received 192 717 trace requests from CIC. Of those requests, 34 resulted in information briefs, none of which included advice recommending the denial of citizenship. In two cases the Service requested a deferral of its advice.[22]

Nature of the Service's Advice to CIC

Of the 81 650[23] immigration security screening assessments conducted by CSIS during the year under review, the Service forwarded briefs on 166 to CIC. Fifty-seven were information briefs containing security-related information but stopping short of a finding of inadmissibility. The other 109 contained Service notification that it had information that the applicant "is or was" a member of an inadmissible class of persons as defined in section 19(1) of the *Immigration Act*.[24]

Committee's Upcoming Review of CSIS Security Screening Briefs

In the upcoming year, the Committee intends to conduct a full review of CSIS security screening briefs to Government both for Federal employees and for investigations conducted for the immigration program. We will report our findings in the 2000–2001 annual report.

SCREENING ON BEHALF OF FOREIGN AGENCIES

The Service may enter into reciprocal arrangements with foreign agencies to provide security checks on Canadians and other individuals who have resided in Canada. In 1999–2000 the Service concluded 876 foreign screening checks, 124 of which required field investigations. These investigations resulted in two information briefs.

B. Investigations of Complaints

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

- 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 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 SECTION 41 COMPLAINTS—"ANY ACT OR THING"

During the 1999–2000 fiscal year, the Committee dealt with 67 complaints under section 41 of the *CSIS Act* ("any act or thing"). Forty-eight of these were new complaints and 19 cases were continued from the previous fiscal year (*see* Table 2).

Table 2
Complaints (April 1, 1999 to March 31, 2000)

	New Complaints	Carried Over from 1998–1999	Closed in 1999–2000	Carried forward to 1999–2000
CSIS Activities	48	19	50	17
Security Clearances	4	1	1	4
Immigration	1	0	0	1
Citizenship	1	0	0	1
Human Rights	1	0	0	1

Immigration-Related Complaints

The year under review again confirmed a trend toward increased numbers of complaints filed in relation to CSIS activities in immigration security screening. Of the 67 complaint cases handled by the Committee in 1999–2000, 32 dealt with immigration matters. Three of the complaints resulting in reports are summarized in Appendix D, "Complaint Case Histories."

Complaints Concerning Improper Conduct and Abuse of Power

Nineteen of the section 41 complaints handled in 1999–2000 concerned individuals alleging that the Service had subjected them to surveillance, illegal actions or had otherwise abused its powers. In the majority of these the Committee concluded after investigating that the Service was neither involved in nor responsible for the activities being alleged.

In one instance, however, we believe the Service demonstrated poor judgment in disclosing information to a complainant in light of the knowledge the Service had about the individual and the possible impact of such disclosure on the complainant's well-being. In two other cases, the Committee was able to assure complainants that the Service had not passed information about them to third parties.

So as not to confirm indirectly which targets are of interest to the Service, the Committee does not, as a rule, confirm one way or another to a complainant whether he or she is the subject of a CSIS targeting authority. The Committee does, however, conduct a thorough investigation into the complainant's allegations.

If the individual has in fact been a Service target, the Committee assures itself that the targeting has been carried out in accordance with the *Act*, Ministerial Direction and CSIS policy. If we find that the Service has acted appropriately we convey that assurance to the complainant. If we find issues of concern we share those with the Director of CSIS and the Solicitor General, and to the extent possible, report on the matter in our annual report.

Complaints the Committee was Precluded from Investigating

The Committee was precluded from investigating some cases because criteria set out in section 41 of the *Act* had not been met. In these cases the complainant had not first made the complaint to the Director of CSIS or the individuals concerned were entitled to seek redress through other means set out in the *Public Service Staff Relations Act* and the *CSIS Act*. In all cases, the complainants were notified of the Committee's decision.

Misdirected Complaints

The Committee received a small number of complaints that involved neither CSIS nor issues of national security. To the extent possible, and after having informed the individual that the complaint was not within the Committee's jurisdiction, we attempted to redirect the complaints to the appropriate authorities.

FINDINGS ON SECTION 42 COMPLAINTS—"DENIAL OF A SECURITY CLEARANCE"

In 1999–2000, the Committee investigated five complaints arising from denials of security clearances. Two concerned the revocation of existing clearances; three others related to the denial of new clearances. A case for which a Committee report has been issued is summarized in Appendix D; the investigation for another case was completed and the report is pending. Three others have been carried over into next year.

FINDINGS ON MINISTERIAL REPORTS

Citizenship Refusals

In the ongoing matter of the citizenship application of Ernst Zündel, in June 1999, Justice McKeown of

the Federal Court rejected Mr. Zündel's application for a review of an earlier ruling. This decision was appealed, and the Court dismissed the appeal with costs.

In its ruling, the Bench of the Federal Court of Appeal[25] was of the view that the appeal could not succeed. If the Court assumed that it was, in effect, the earlier Ministerial Report that was under review, the time limit for such review had expired. If, on the other hand, the Court were to assume that it was the Committee's letter of March 31,1999 that was at issue, the Court could discern no error in the letter that would warrant the Court's intervention. In sum, it was the Court's view that the Minister's Report was sufficient to initiate an investigation by the Committee, that the Report obligated the Committee to investigate and that the Committee had the legal mandate to do so.

As a consequence of this decision, the Committee Member presiding over the case refused to grant a stay of proceedings to allow Mr. Zündel to obtain leave from the Supreme Court to further appeal the ruling of the Federal Court of Appeal. The matter is scheduled to resume in late 2000.

Reports Pursuant to the Immigration Act

The Committee received no Ministerial Reports of this type during the year under review. However, a case involving a report received in 1996–97 has once again been referred to the Committee.

In a decision rendered on March 14, 2000, Justice Gibson of the Federal Court Trial Division quashed a SIRC 1998 report, which found that a subject of an earlier Ministerial Report did in fact fall under the class of inadmissible persons described in the *Immigration Act*. (*see* inset *Yamani v. Canada* for more details on the ruling.)

Following Justice Gibson's decision, the matter was referred back to the Committee to be redetermined in accordance with the law, the Federal Court decision and the two judicial reviews. Before rehearing and redetermining the matter the Committee will seek confirmation from the Minister of Citizenship and Immigration Canada that CIC intends to pursue the matter.

CANADIAN HUMAN RIGHTS COMMISSION REFERRALS

During the year under review the Committee received no Human Rights Commission referrals. We did complete an investigation from the previous year involving a group of current and ex-employees of CSIS. The Committee will report its findings to the Commission shortly. The Committee noted that the Service granted a security clearance to complainants' counsel so that complainants could fully discuss the nature of their work while ensuring that sensitive information remained properly protected.

Yamani v. Canada *(Minister of Citizenship and Immigration) 2000 F.C.J. No.317*

This case involved judicial review of a report issued by the Committee to the Governor in Council in April 1998 pursuant to section 39 of the *Immigration Act*.[26] In the report, the Committee found that a certificate under section 40(1) of the *Immigration Act*—possibly leading to the forfeiture of the right to remain in Canada—should be issued in respect of Mr. Yamani as he was a person described in sections 19(1)(e) and 19(1)(g) of the *Immigration Act*.

This report was the second issued by the Committee about Mr. Yamani. The first was set aside by order of Mr. Justice MacKay in 1996 and referred back to the Committee.[27]

In the review of the Committee's most recent report the court considered the following:

- Whether the Committee erred in law by finding it lacked the jurisdiction to consider and rule on constitutional challenges to the validity of the legislation it is required to apply.

- Whether the terms "subversion," "democratic government, institutions and processes" and "reasonable grounds to believe" found in section 19 of the *Immigration Act* were invalid as they violated Mr. Yamani's constitutional rights and should therefore be found to be of no force and effect.[28]

- Whether the Committee had erred in law by ignoring or misinterpreting evidence and whether such errors led to unreasonable conclusions by the Committee.

The first of these three issues was not pursued because the constitutional challenges were argued *de novo* in the context of the second issue. With respect to the second issue, Mr. Justice Gibson upheld the challenged provisions as valid under the *Charter*.[29]

On the third issue, Mr. Justice Gibson concluded that the evidence about the current and future capacity of the organization to which the complainant belonged—the Popular Front for the Liberation of Palestine (PFLP)—showed that it was not the potent, radical terrorist organization it once was. Justice Gibson held that the Committee appeared to have ignored the testimony of an expert witness to the effect that subversion has two essential characteristics. First that it be clandestine or deceptive, and second, that it involve undermining from within. Under this definition, Mr. Justice Gibson concluded, Mr. Yamani could not be said to have engaged in subversion against the state of Israel, either directly or through support of or membership in the PFLP, because being external to the state of Israel, the organization could not undermine from within. Consequently, Mr. Justice Gibson found that the Committee had erred in law in relying "without further analysis" on the definition of "subversion" given in the *Shandi* case[30] and in concluding that Mr. Yamani was a person described in section 19(1)(e) of the *Immigration Act*.

With respect to the Committee's finding that Mr. Yamani was a person described under section 19(1)(g) of the *Immigration Act*, Mr. Justice Gibson found the Committee's analysis insufficient to support its conclusion. The court thus could not allow the Committee's finding to stand. In SIRC's favour, however, the court did find that the Committee's concerns about Mr. Yamani's credibility were justified.[31]

Justice Gibson ordered that the matter be remitted to the Committee for reconsideration.