

Appendix A

Glossary

Glossary

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| ARAACP | Airport Restricted Access Area Clearance Program |
| BF | Bring Forward system |
| CI | Counter Intelligence |
| CIA | Central Intelligence Agency (United States) |
| CIC | Citizenship and Immigration Canada |
| Committee | Security Intelligence Review Committee (SIRC) |
| CSE | Communications Security Establishment (DND) |
| CSIS | Canadian Security Intelligence Service |
| CT | Counter Terrorism |
| DFAIT | Department of Foreign Affairs and International Trade |
| Director | The Director of CSIS |
| DND | Department of National Defence |
| EXIPC | Executive Intelligence Production Committee |
| GSP | Government Security Policy |
| IAC | Intelligence Assessment Committee (Privy Council Office) |
| IPM | Immigration Program Manager (CIC) |
| IWG | Interdepartmental Working Group |
| JSCI | Joint Standing Committee on Intelligence |
| MOU | Memorandum of Understanding |
| NARU | National Archives Requirements Unit (CSIS) |

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| OIC | Officer in Charge (RCMP) |
| PFLP | Popular Front for the Liberation of Palestine |
| RAP | Requirements, Analysis & Production Branch (CSIS) |
| RCMP | Royal Canadian Mounted Police |
| RTA | Request for Targeting Authority |
| Service | Canadian Security Intelligence Service (CSIS) |
| SIRC | Security Intelligence Review Committee |
| SLO | Security Liaison Officers |
| TARC | Target Approval and Review Committee |
| WMD | Weapons of Mass Destruction |

Appendix B

SIRC Reports and Studies Since 1984

SIRC Reports and Studies Since 1984

(Section 54 reports—special reports the Committee makes to the Minister—are indicated with an *)

1. *Eighteen Months After Separation: An Assessment of CSIS' Approach to Staffing Training and Related Issues*, (SECRET) * (86/87-01)
2. *Report on a Review of Security Screening for Applicants and Employees of the Federal Public Service*, (SECRET) * (86/87-02)
3. *The Security and Intelligence Network in the Government of Canada: A Description*, (SECRET) * (86/87-03)
4. *Ottawa Airport Security Alert*, (SECRET) * (86/87-05)
5. *Report to the Solicitor General of Canada Concerning CSIS' Performance of its Functions*, (SECRET) * (87/88-01)
6. *Closing the Gaps: Official Languages and Staff Relations in the CSIS*, (UNCLASSIFIED) * (86/87-04)
7. *Counter-Subversion: SIRC Staff Report*, (SECRET) (87/88-02)
8. *SIRC Report on Immigration Screening*, (SECRET) * (87/88-03)
9. *Report to the Solicitor General of Canada on CSIS' Use of Its Investigative Powers with Respect to the Labour Movement*, (PUBLIC VERSION) * (87/88-04)
10. *The Intelligence Assessment Branch: A SIRC Review of the Production Process*, (SECRET) * (88/89-01)
11. *SIRC Review of the Counter-Terrorism Program in the CSIS*, (TOP SECRET) * (88/89-02)
12. *Report to the Solicitor General of Canada on Protecting Scientific and Technological Assets in Canada: The Role of CSIS*, (SECRET) * (89/90-02)
13. *SIRC Report on CSIS Activities Regarding the Canadian Peace Movement*, (SECRET) * (89/90-03)
14. *A Review of CSIS Policy and Practices Relating to Unauthorized Disclosure of Classified Information*, (SECRET) (89/90-04)
15. *Report to the Solicitor General of Canada on Citizenship/Third Party Information*, (SECRET) * (89/90-05)
16. *Amending the CSIS Act: Proposals for the Special Committee of the House of Commons*, (UNCLASSIFIED) (89/90-06)
17. *SIRC Report on the Innu Interview and the Native Extremism Investigation*, (SECRET) * (89/90-07)
18. *Supplement to the Committee's Report on Immigration Screening of January 18, 1988*, (SECRET) * (89/90-01)
19. *A Review of the Counter-Intelligence Program in the CSIS*, (TOP SECRET) * (89/90-08)
20. *Domestic Exchanges of Information*, (SECRET) * (90/91-03)

21. *Section 2(d) Targets—A SIRC Study of the Counter-Subversion Branch Residue*, (SECRET) (90/91-06)
22. *Regional Studies (six studies relating to one region)*, (TOP SECRET) (90/91-04)
23. *Study of CSIS' Policy Branch*, (CONFIDENTIAL) (90/91-09)
24. *Investigations, Source Tasking and Information Reporting on 2(b) Targets*, (TOP SECRET) (90/91-05)
25. *Release of Information to Foreign Agencies*, (TOP SECRET) * (90/91-02)
26. *CSIS Activities Regarding Native Canadians—A SIRC Review*, (SECRET) * (90/91-07)
27. *Security Investigations on University Campuses*, (TOP SECRET) * (90/91-01)
28. *Report on Multiple Targeting*, (SECRET) (90/91-08)
29. *Review of the Investigation of Bull, Space Research Corporation and Iraq*, (SECRET) (91/92-01)
30. *Report on Al Mashat's Immigration to Canada*, (SECRET) * (91/92-02)
31. *East Bloc Investigations*, (TOP SECRET) (91/92-08)
32. *Review of CSIS Activities Regarding Sensitive Institutions*, (TOP SECRET) (91/92-10)
33. *CSIS and the Association for New Canadians*, (SECRET) (91/92-03)
34. *Exchange of Information and Intelligence between CSIS & CSE, Section 40* (TOP SECRET) * (91/92-04)
35. *Victor Ostrovsky*, (TOP SECRET) (91/92-05)
36. *Report on Two Iraqis—Ministerial Certificate Case*, (SECRET) (91/92-06)
37. *Threat Assessments, Section 40 Study*, (SECRET) * (91/92-07)
38. *The Attack on the Iranian Embassy in Ottawa*, (TOP SECRET) * (92/93-01)
39. *"STUDYNT" The Second CSIS Internal Security Case*, (TOP SECRET) (91/92-15)
40. *Domestic Terrorism Targets—A SIRC Review*, (TOP SECRET) * (90/91-13)
41. *CSIS Activities with respect to Citizenship Security Screening*, (SECRET) (91/92-12)
42. *The Audit of Section 16 Investigations*, (TOP SECRET) (91/92-18)
43. *CSIS Activities during the Gulf War: Community Interviews*, (SECRET) (90/91-12)
44. *Review of CSIS Investigation of a Latin American Illegal*, (TOP SECRET) * (90/91-10)
45. *CSIS Activities in regard to the Destruction of Air India Flight 182 on June 23, 1985—A SIRC Review*, (TOP SECRET) * (91/92-14)
46. *Prairie Region—Report on Targeting Authorizations (Chapter 1)*, (TOP SECRET) * (90/91-11)
47. *The Assault on Dr. Hassan Al-Turabi*, (SECRET) (92/93-07)

48. *Domestic Exchanges of Information (A SIRC Review—1991/92)*, (SECRET) (91/92-16)
49. *Prairie Region Audit*, (TOP SECRET) (90/91-11)
50. *Sheik Rahman's Alleged Visit to Ottawa*, (SECRET) (CT 93-06)
51. *Regional Audit*, (TOP SECRET)
52. *A SIRC Review of CSIS' SLO Posts (London & Paris)*, (SECRET) (91/92-11)
53. *The Asian Homeland Conflict*, (SECRET) (CT 93-03)
54. *Intelligence-Source Confidentiality*, (TOP SECRET) (CI 93-03)
55. *Domestic Investigations (1)*, (SECRET) (CT 93-02)
56. *Domestic Investigations (2)*, (TOP SECRET) (CT 93-04)
57. *Middle East Movements*, (SECRET) (CT 93-01)
58. *A Review of CSIS' SLO Posts (1992-93)*, (SECRET) (CT 93-05)
59. *Review of Traditional CI Threats*, (TOP SECRET) (CI 93-01)
60. *Protecting Science, Technology and Economic Interests*, (SECRET) (CI 93-04)
61. *Domestic Exchanges of Information*, (SECRET) (CI 93-05)
62. *Foreign Intelligence Service for Canada*, (SECRET) (CI 93-06)
63. *The Audit of Section 16 Investigations and Foreign Intelligence Reports*, (TOP SECRET) (CI 93-11)
64. *Sources in Government*, (TOP SECRET) (CI 93-09)
65. *Regional Audit*, (TOP SECRET) (CI 93-02)
66. *The Proliferation Threat*, (SECRET) (CT 93-07)
67. *The Heritage Front Affair. Report to the Solicitor General of Canada*, (SECRET) * (CT 94-02)
68. *A Review of CSIS' SLO Posts (1993-94)*, (SECRET) (CT 93-09)
69. *Domestic Exchanges of Information (A SIRC Review 1993-94)*, (SECRET) (CI 93-08)
70. *The Proliferation Threat—Case Examination*, (SECRET) (CT 94-04)
71. *Community Interviews*, (SECRET) (CT 93-11)
72. *An Ongoing Counter-Intelligence Investigation*, (TOP SECRET) * (CI 93-07)
73. *Potential for Political Violence in a Region*, (SECRET) (CT 93-10)
74. *A SIRC Review of CSIS' SLO Posts (1994-95)*, (SECRET) (CT 95-01)
75. *Regional Audit*, (TOP SECRET) (CI 93-10)
76. *Terrorism and a Foreign Government*, (TOP SECRET) (CT 94-03)
77. *Visit of Boutros Boutros-Ghali to Canada*, (SECRET) (CI 94-04)

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| <p>78. <i>Review of Certain Foreign Intelligence Services</i>, (TOP SECRET) (CI 94-02)</p> <p>79. <i>The Audit of Section 16 Investigations and Foreign Intelligence Reports</i>, (TOP SECRET) (CI 94-01)</p> <p>80. <i>Domestic Exchanges of Information (A SIRC Review 1994–95)</i>, (SECRET) (CI 94-03)</p> <p>81. <i>Alleged Interference in a Trial</i>, (SECRET) (CT 95-04)</p> <p>82. <i>CSIS and a “Walk-In”</i>, (TOP SECRET) (CI 95-04)</p> <p>83. <i>A Review of a CSIS Investigation Relating to a Foreign State</i>, (TOP SECRET) (CI 95-02)</p> <p>84. <i>The Audit of Section 16 Investigations and Foreign Intelligence Reports</i>, (TOP SECRET) (CI 95-05)</p> <p>85. <i>Regional Audit</i>, (TOP SECRET) (CT 95-02)</p> <p>86. <i>A Review of Investigations of Emerging Threats</i>, (TOP SECRET) (CI 95-03)</p> <p>87. <i>Domestic Exchanges of Information</i>, (SECRET) (CI 95-01)</p> <p>88. <i>Homeland Conflict</i>, (TOP SECRET) (CT 96-01)</p> <p>89. <i>Regional Audit</i>, (TOP SECRET) (CI 96-01)</p> <p>90. <i>The Management of Human Sources</i>, (TOP SECRET) (CI 96-03)</p> <p>91. <i>Economic Espionage I</i>, (SECRET) (CI 96-02)</p> <p>92. <i>Economic Espionage II</i>, (TOP SECRET) (CI 96-02)</p> | <p>93. <i>Audit of Section 16 Investigations and Foreign Intelligence Reports 1996–97</i>, (TOP SECRET) (CI 96-04)</p> <p>94. <i>Urban Political Violence</i>, (SECRET) (SIRC 1997-01)</p> <p>95. <i>Domestic Exchanges of Information (1996–97)</i>, (SECRET) (SIRC 1997-02)</p> <p>96. <i>Foreign Conflict, Part I</i>, (SECRET) (SIRC 1997-03)</p> <p>97. <i>Regional Audit</i>, (TOP SECRET) (SIRC 1997-04)</p> <p>98. <i>CSIS Liaison with Foreign Agencies</i>, (TOP SECRET) (SIRC 1997-05)</p> <p>99. <i>Spy Case</i>, (TOP SECRET) (SIRC 1998-02)</p> <p>100. <i>Domestic Investigations (3)</i>, (TOP SECRET) (SIRC 1998-03)</p> <p>101. <i>CSIS Cooperation with the RCMP, Part I</i>, (SECRET) * (SIRC 1998-04)</p> <p>102. <i>Source Review</i>, (TOP SECRET) (SIRC 1998-05)</p> <p>103. <i>Interagency Cooperation Case</i>, (TOP SECRET) (SIRC 1998-06)</p> <p>104. <i>A Case of Historical Interest</i>, (TOP SECRET) (SIRC 1998-08)</p> <p>105. <i>CSIS’ Role in Immigration Security Screening</i>, (SECRET) (CT 95-06)</p> <p>106. <i>Foreign Conflict—Part II</i>, (TOP SECRET) (SIRC Study 1997-03)</p> <p>107. <i>Review of Transnational Crime</i> (SECRET) (SIRC Study 1998-01)</p> |
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108. *CSIS Cooperation with the RCMP—Part II* (SECRET) * (SIRC Study 1998-04)
109. *Audit of Section 16 Investigations & Foreign Intelligence 1997–98* (TOP SECRET) (SIRC Study 1998-07)
110. *Review of Intelligence Production* (SECRET) (SIRC Study 1998-09)
111. *Regional Audit* (TOP SECRET) (SIRC Study 1998-10)
112. *CSIS Liaison with Foreign Agencies* (TOP SECRET) (SIRC Study 1998-11)
113. *Allegations by a Former CSIS Employee*, (TOP SECRET) * (SIRC 1998-12)
114. *CSIS Investigations on University Campuses* (SECRET) (SIRC Study 1998-14)
115. *Review of Foreign Intelligence Activities in Canada* (TOP SECRET) (SIRC Study 1998-15)
116. *Files* (TOP SECRET) (SIRC Study 1998-16)
117. *Audit of Section 16 Investigations & Foreign Intelligence* (TOP SECRET) (SIRC Study 1999-01)
118. *A Long-Running Counter Intelligence Investigation* (TOP SECRET) (SIRC Study 1999-02)
119. *Domestic Exchanges of Information* (TOP SECRET) (SIRC Study 1999-03)
120. *Proliferation* (TOP SECRET) (SIRC Study 1999-04)
121. *Domestic Targets* (TOP SECRET) (SIRC Study 1999-06)
122. *Terrorist Fundraising* (TOP SECRET) (SIRC Study 1999-07)
123. *Regional Audit* (TOP SECRET) (SIRC Study 1999-08)
124. *Foreign State Activities* (TOP SECRET) (SIRC Study 1999-09)
125. *Project Sidewinder* (TOP SECRET) (SIRC Study 1999-10)
126. *Security Breach* (TOP SECRET) (SIRC Study 1999-11)

Appendix C

Recommendations and Major Findings

Project Sidewinder

The Committee found no evidence of political interference as alleged. None of the documents or records reviewed, interviews conducted or representations received evidenced such interference, actual or anticipated. Project Sidewinder was not terminated; it was delayed when its product was found to be inadequate.

With respect to the first Sidewinder draft report, we found the draft to be deeply flawed in almost all respects. The report did not meet the most elementary standards of professional and analytical rigour. The actions the Service took to ensure that subsequent products of its collaborative effort with the RCMP on Project Sidewinder would be of higher quality were appropriate.

The Committee found no evidence of any substantial and immediate threat of the sort envisaged in the first Sidewinder draft, no evidence that a threat was being ignored through negligence or design and no evidence that the Government had not been appropriately warned of substantive threats where such existed. Both CSIS and the RCMP continue to investigate similar threats separately.

The Committee found no indication that the disagreements between CSIS and the RCMP, which arose during the course of Project Sidewinder, had caused, or were symptomatic of, difficulties in other areas of the inter-agency relationship.

The Service disposed of what it regarded as “transitory documents” related to the Sidewinder first draft report. It is unable to locate other documents the Committee regards as clearly non-transitory and has stated that these were not disposed of but rather “misfiled.” However, the Committee does not believe this lapse had a material impact on the events surrounding Project Sidewinder; nor is there any evidence that raw information, kept in Service files and in part used by the Sidewinder analysts to compile their first report, was disposed of or altered in any manner.

Lost Documents—A Serious Breach of Security

On October 10, 1999, the vehicle of a CSIS Headquarters employee was vandalized in the Greater Toronto area. Inside the vehicle were a number of CSIS documents, several of which were classified. These were among the items stolen.

Following an investigation by the Service’s Internal Security Branch the employee was dismissed from the Service. In addition, the Service altered some of its procedures for document control and strengthened its internal “security awareness” program.

The Service’s own “lost documents” investigation was conducted in a competent and professional manner, ultimately revealing how its classified materials went astray. In the course of its investigation, Internal Security had considerable difficulty determining the precise content of one item, and thus had to make an educated guess at what the employee held at the time of the burglary. This apparent lapse helped nudge the Committee toward the conclusion that there may have been a problem in CSIS internal document control procedures generally.

We are aware that the Service periodically conducts its own internal review of security procedures. Nevertheless, security breaches in recent years involving CSIS materials suggests that these internal reviews have not been as effective as the Service and the Committee would have wished.

Threats from a Foreign Conflict

The threat perceived by the Service arose chiefly from the activities of foreign intelligence services operating in Canada. These included suspected attempts to raise funds, collect information on homeland communities, foment civil unrest in Canada and illegally procure weapons and technology.

The Committee determined that the Service had sufficient grounds to conduct the investigation and to employ the investigative methods permitted in the targeting authorities and Court warrants.

Three issues drew the Committee's attention:

- an overly general targeting authority giving rise to a formal recommendation:

The Committee recommends that RTAs be structured and written to identify clearly the reasons for targeting each target named, under each threat definition cited.

- an instance in which a CSIS officer made well-intentioned but inappropriate comments during the course of conducting an interview.
- an instance where information collected did not meet the “strictly necessary” test. The Service agreed with this finding and deleted the information from its database.

Terrorist Fundraising

The purpose of the Committee's study was to examine several facets of the Service's work in addressing the problems of terrorist fundraising in Canada. Our goals were twofold: to determine the effectiveness of Service advice in assisting the Government's efforts to curb terrorist fundraising and to ensure that all CSIS actions were appropriate and in conformity with the law.

The Service stated that, as a result of its investigations linked to international terrorism, it had uncovered several Canadian organizations suspected of facilitating terrorist fundraising objectives. Our own review of these investigations showed that CSIS did have sufficient information to believe that the links to international terrorist groups and to their fundraising efforts constituted a threat to the security of Canada.

CSIS and its departmental clients both expressed satisfaction with the liaison relationship. Recipients of Service reports said that the information had been most useful as “investigative leads” assisting in determining how and where to follow up.

Two recommendations emerged from this study. First, in respect of the nature of the Service's advice,

The Committee recommends that in future, CSIS advise its client departments of substantive changes to the assessments it has previously given them, which arise as a consequence of new information.

Second, although the Committee supports legislative changes that would allow more effective use to be made of the information shared between CSIS and its client departments, such enhanced procedures could well generate an increase in the number of complaints brought to the Committee. To address such an eventuality,

The Committee recommends that the Ministry of the Solicitor General and Privy Council Office initiate special measures to keep SIRC apprised, on a timely basis and as appropriate, of the IWG's (Interdepartmental Working Group on Countering Terrorist-Support Activities) proposals as they impact on CSIS activities.

Investigation of a Domestic Target

During a previous review, the Committee learned of several CSIS source operations that sometimes involved the legitimate dissent milieu—specifically, certain protests and demonstrations. We subsequently reviewed the investigations.

The Committee's review identified no violations of Service policy or Ministerial Direction. CSIS had reasonable grounds to suspect that the targets were threats to the security of Canada. Notwithstanding our general conclusions, this set of investigations was the source of some residual concerns for the Committee.

The Committee believes these point to an occasional lack of rigour in the Service's application of existing policies, which oblige it to weigh the requirement to protect civil liberties against the need to investigate potential threats. The Committee would like to see tangible evidence that significant investigatory decisions involving the legitimate dissent milieu are adequately weighed.

The Committee recommends that the Service make the changes to its administrative procedures necessary to ensure that all significant investigatory decisions in the area of lawful advocacy, protest and dissent are weighed and so documented.

The Committee believes that as well as providing an additional measure of comfort to the Review Committee, such changes would help maintain the day-to-day sensitivity of all CSIS staff to the need to protect civil liberties.

The Committee had an additional recommendation concerning the need to clarify a section of the CSIS *Operational Policy Manual* (a classified document).

A Long-Running Counter Intelligence Investigation

It is the Service's view that the target of this investigation is engaged in intelligence-related activities that manifest themselves in classical espionage, foreign influence in various aspects of Canadian society and the theft of economic and scientific information through clandestine means.

In an earlier report the Committee stated that “the threats posed by the intelligence gathering activities of this [target] [were] at th[e] time, nebulous, and sometimes hard to define.” Although events since then have served to confirm that the potential for serious threat to Canadian interests is serious and genuine, the current threat as measured in concrete and confirmed activity appears to us to be limited and infrequent.

This difference of opinion between CSIS and the Committee about the nature of the threat led us to conclusions about some of the target's activities that were at odds with those of the Service. Some of the activities investigated by the Service showed the target engaged in intelligence gathering in Canada, but others did not.

The Committee believes each of the targeting decisions examined was justified by the evidence. However, in the Service's application to secure warrant powers against one target were a number of overstatements.

The Committee believes that the potential threat to Canadians and Canadian interests arising from the activities of this target is significant. However, our review evidenced a few instances that pointed to the Service occasionally drawing conclusions not based on the facts at hand.

Domestic Exchanges of Information (4)

In carrying out its mandate to investigate suspected threats to the security of Canada, CSIS co-operates and exchanges information with federal and provincial departments and agencies and police forces across Canada. Under section 38(a)(iii) of the *Act*, the Committee is charged with the task of examining the co-operation arrangements the Service has with domestic agencies, as well as the information and intelligence it discloses under those arrangements.

The Committee found that CSIS co-operation with federal departments and agencies and its relations with provincial authorities and police forces was productive. Our review also showed a general willingness between CSIS and the RCMP to share information with each other.

We found some instances where, in the Committee's opinion, CSIS had retained unnecessary information. One region had collected a report that did not meet the “strictly necessary” criterion under section 12 of the *CSIS Act*. CSIS has since removed the report from its database. In another instance, some of the information contained in reports did not, in our view, demonstrate reasonable grounds to suspect serious violence or a possible threat to public safety. The Committee recommended that CSIS report and retain only the information required to meet its obligations with regard to threat assessments.

Proliferation of Weapons of Mass Destruction

Canada's efforts to prevent or at least slow the proliferation of weapons of mass destruction (WMD)—chemical, biological and nuclear—to states that do not possess them are longstanding. Although Canada does not possess such weapons itself, a national infrastructure of advanced nuclear, chemical, biotechnological and electronic industries and research facilities makes the country vulnerable to illicit procurement. The goal of the Committee's review was to assess the Service's performance of its function to advise the Government in a clearly vital area.

From CSIS files it was evident that, because of consistent attempts to procure WMD, a certain foreign country was a particular focus for the Service's investigative efforts. Based on an extensive review of the documentation, we concluded that CSIS had reasonable grounds to suspect a threat to the security of Canada.

It is evident to the Committee that the Service plays an important role in Canada's management of proliferation issues at the domestic level (co-operating with police and other enforcement agencies), and globally (acting in support of DFAIT counter-proliferation initiatives, and exchanging information with allied governments and other parts of the international antiproliferation regime). We noted that, overall, the Service's approach to proliferation matters was both strategically sound and flexibly managed.

Audit of CSIS Activities in a Region of Canada

INTERNAL SECURITY

We determined that the office's internal security practices and procedures were generally sound and noted that in response to incidents elsewhere in recent years, the Region had implemented CSIS Headquarters's new procedures in relation to managing classified documents and electronic storage media.

The Committee did note, however, that the Region had conducted significantly fewer (in proportion to the staff complement) random searches of employees entering or leaving Service premises than CSIS offices in other regions. Given the security breaches of recent years, and the Service's acknowledgment of the role of random searches in increasing "security awareness" among its employees, the Committee believes the Region should bring its security practices into line with other of the Service's regional operations.

The Committee recommends that the Region increase the number of random searches to reflect the current practices in other CSIS regional offices.

Collection of Foreign Intelligence

MINISTERIAL REQUESTS

A 1987 tri-ministerial MOU stipulates that any section 16 request likely to result in the inadvertent interception of communications to which a Canadian is party, should so state. Although all Ministerial requests since August

1998 have contained such clauses, the Committee believes the declaration used currently concerning incidental interception requires additional clarification.

The Committee recommends that in requesting section 16 assistance, Ministers indicate explicitly those instances where there is a real likelihood that the communications of Canadians will be subject to incidental interception as part of the collection activity.

A related concern arises with respect to CSIS warrant applications resulting from section 16 requests. Two applications examined by the Committee did not include, as stipulated in the tri-ministerial MOU, the mandatory caution against directing the collection of information at citizens, companies and permanent residents.

The Committee strongly recommends that all future CSIS section 16 warrant applications contain the required prohibition against directing the collection of information at Canadian citizens, companies or permanent residents.

REPORTING OF SECTION 16 INFORMATION

The Committee also reviewed CSIS reports to requesting Ministries based on section 16 collection. Some contained information about Canadians that went beyond that necessary for the understanding and exploitation of the intelligence. Although these represented only a very small fraction of the total, the Committee believes that the Service could be more circumspect with little or no penalty to the quality of its analyses.

The Committee recommends that CSIS ensure that it is more circumspect and that reports to requesting agencies contain only that information absolutely essential for the exploitation of the foreign intelligence.

Appendix D

Complaint Case Histories

Complaint Case Histories

This section describes complaint cases submitted to the Review Committee during the past year on which decisions have been reached. Not addressed are complaints that were handled through administrative review, were misdirected, were outside the Committee's mandate, or on which decisions have yet to be rendered.

Where appropriate, complaints are investigated through a quasi-judicial hearing presided over by a member of the Committee. After the hearings are complete, the presiding member provides the Solicitor General and the Director of CSIS with a decision. The complainant also receives a copy of the decision, after any information with national security implications has been severed from the document.

Of the four cases described below, three involve complaints pursuant to section 41 of the *CSIS Act*, and related to the Service's role in conducting security screening investigations on behalf of Citizenship and Immigration Canada (CIC). The fourth complaint was brought under section 42 of the *Act* by a federal government employee who was denied an upgrading in security clearance level.

Case #1

The complainant has been in Canada since 1988 and was granted permission to stay in Canada on humanitarian and compassionate grounds. He had applied for permanent residence and in October 1996, the Service forwarded its advice to CIC on his admissibility to Canada as defined under s.19 of the *Immigration Act*.

The complainant is a vocal supporter of an overseas nationalist movement. Nonetheless, following fifteen days of hearings and a careful review of all of the documentary and testimonial evidence, the Committee found no concrete evidence that the complainant is or ever was a member of a recognized terrorist organization. The Committee found that the Service's reports on its interviews of the complainant contained material inaccuracies about the complainant's replies to important questions, and relied on statements supposedly made by the complainant that were inaccurately recorded.

The Committee subsequently recommended that the Service inform CIC of the Committee's findings and of the Committee's recommendation that the complainant's application be processed for landing. This recommendation was in accordance with the terms of reference agreed to by all parties in advance of the hearing.

Case #2

The second complainant came to Canada in 1991. He was recognized as a Convention refugee and applied for permanent resident status. In 1995, the Service forwarded its advice to CIC on the complainant's admissibility to Canada as a permanent resident.

The complainant was described by the Service as a member of a terrorist organization who lied about his membership when he was interviewed by the Service. The two CSIS investigators believed that they had strong

evidence to support their conclusion. The Service relied on the fact that the complainant had indicated his support of the organization, had associated with alleged members of it and was described by another person (who was himself reporting hearsay information) as a member.

The nature of the Service's interview itself became a significant issue in this case. The Service's view is that these interviews are part of an investigatory process, and provides some of the factual basis for CSIS' report to immigration. The investigator stated in his testimony to the Committee that he felt no obligation to discuss the Service's adverse information about the complainant with him because "we [were] just gathering information, . . . not making a decision." It is the Service's view that in such situations the applicant has the full responsibility for explaining the nature of his political activities and that the Service has no obligation to raise its concerns with the applicant.

The Committee does not agree. Rather, we believe that this approach does not give due consideration to the potential impact of a security screening interview, and is not in accord with the view it expressed in an earlier case, that the Service has a duty to "provide an opportunity for the prospective immigrant to explain adverse information."³² It is clear to the Committee that in this case, the complainant was never provided such an opportunity.

Although we believe the Service's initial interest in the complainant was reasonable, given the complainant's activities in support of the overseas nationalist movement, the Service's investigation failed to produce information which would constitute "reasonable grounds" to conclude the complainant was a member of the terrorist organization.

The Committee recommended that the Service inform CIC of the Committee's findings and of the Committee's recommendation that the complainant's application should be processed for landing. This recommendation was in accordance with the terms of reference agreed to by all parties in advance of the hearing.

Case # 3

The complainant arrived in Canada in 1994, was granted Convention refugee status and applied to become a permanent resident.

In 1997, the Service forwarded its advice to CIC on the complainant's admissibility. The advice sent to CIC by the Service was based on a comparison of three documents: the personal information form (PIF) completed by the complainant when he claimed Convention Refugee Status; the immigration form completed by the complainant when he applied for permanent residence status; and, the CSIS report consolidating the notes of the two CSIS investigators who interviewed the complainant.

The Committee found the Service brief to be biased and full of conjecture, often repeating the same point as if to give it more weight. The Committee's investigation revealed that some of the Service's assertions lacked substantiation and some damaging allegations about the complainant were found to be untrue. The Service had not attempted

to verify the complainant's alibi for his alleged activities which were of concern to the Service. In addition, the Service's advice was sent to CIC twenty-seven months after it interviewed the complainant and the information reported was out of date.

The Committee was also concerned by two other anomalies: CSIS investigators never provided the complainant with an opportunity to know and respond to the adverse information they held, and discrepancies identified by the analyst between the various information forms were not put to the complainant for clarification. The Committee also learned that one of the two CSIS investigators working on the case had limited knowledge of the emigré culture, the terrorist organization and of which cultural organizations in Canada were pro- or anti-the terrorist organization in question.

The Committee had no reason to disbelieve the complainant's account of his experiences in another country. Furthermore, the Immigration Refugee Board, the expert tribunal in this area, ruled that the complainant had a well-founded fear of persecution. The Committee was concerned to learn that the findings of the Immigration Refugee Board had been discarded by an analyst who had never met the complainant.

In sum, the Committee saw no evidence to indicate the complainant had ever been anything other than a peaceful and law-abiding individual. After an extensive review of all available documentary evidence and of the testimony adduced during six days of hearings, the Committee recommended to the Solicitor General that the Service inform CIC of the Committee's findings and of the Committee's recommendation that the complainant's application be processed for landing. This recommendation was in accordance with the terms of reference agreed to by all parties in advance of the hearing.

These three cases shared some characteristics in common, leading the Committee to findings and recommendations that were applicable to all:

- Individuals required to attend an immigration security screening interview with CSIS investigators should receive written notice of the date and time of the interview two weeks in advance of the scheduled interview dates³³ and the notice should specify the purpose of the interview, that it will be conducted by CSIS investigators and that the applicant has a right to attend with counsel or another representative. The notice should also inform applicants that its assessment as to whether to recommend the granting or denial of an application rests on sufficient information being provided by the applicant.³⁴
- (Applicable to cases 1 and 2 only) All immigration security screening interviews be recorded and the recording retained until a decision is made by CIC on the Service's advice regarding the application.³⁵ If the Service makes a negative recommendation, the recordings should be kept until the immigration status of the applicant is determined.³⁶
- The Committee found that criteria for what constitutes "membership" in an organization were applied by the Service in such a way as to cast an overly broad net, with the result that politically active but peaceful and law-abiding nationalists were labelled as "terrorists." For security assessments under the *Immigration Act*, it is

the Committee's view that evidence of commitment or devotion to the cause and evidence that the person is prepared to respond positively to directions from the organization should be the major indicators of membership. The Committee believes the Service weakens its legitimate focus on terrorism when it extends the definition of membership in an "organization engaged in acts of terrorism" to include people like the complainants in these three cases.

- The Committee recommends that when the briefing unit of the Service's Immigration Security Screening Branch is preparing to issue a report to CIC, it draw together in committee the investigator who has interviewed the person, an investigator from the relevant operational desk, an officer not involved in the case to challenge adverse findings, and the Service's Legal Services Branch for the purpose of assessing the information, and ensuring uniformity and accuracy in the brief forwarded to CIC.³⁷
- The Committee believes that information potentially leading to proceedings against an individual must be subject to the highest level of scrutiny for credibility and reliability.

Case #4

This case differs from the first three and concerns the Service's role in providing government security assessments. The complaint was lodged by an individual pursuant to section 42 of the *CSIS Act*.

In 1996, the complainant's position within a small government agency was declared surplus and a new position was found for the complainant requiring a level II security clearance. In July 1997, the Service recommended that the complainant be denied the necessary security clearance upgrade. The Deputy Head of the agency concerned accepted the Service's recommendation and informed the complainant that he would not receive a security clearance because the complainant's activities in Canada focused directly and indirectly in support of a recognized terrorist group operating overseas.

The complainant was very active as a leader in an ethnic community in Canada. He was a high profile advocate for a peaceful solution to the conflict in a foreign country and openly lobbied politicians and diplomats to this end. The complainant was never clandestine or even secretive in his activities on behalf of the ethnic community.

The terrorist group is recognized as a particularly ferocious one, which has few scruples about undertaking any action to advance its cause. As the Service's principal objective in the security clearance process must be the protection of the nation, in marginal cases the Service may be inclined to recommend against granting a clearance, based upon the principle that the only level of risk that is acceptable is zero. In investigating this particular case, the Committee also took into consideration the fact that in other cases the Service had recommended granting security clearance to persons "associated" in one way or another with persons or groups considered a security threat, including the group at issue, because of the special circumstances involved.

With respect to the issue of association, the Committee believes that incidental association alone is not sufficient grounds to recommend a security clearance denial. There must also be evidence to support the reasonable belief

that the individual may act or may be induced to act in a way that constitutes a threat to the security of Canada. Incidental association in itself does not constitute such evidence.

Following seven days of hearings during which extensive documentary and testimonial evidence was adduced, the Committee found that the evidence presented failed to establish reasonable grounds to believe that the complainant posed such a threat. The Committee found the Service's conclusions with regard to the complainant were unwarranted — the result of misinterpreted events combined with speculation. The CSIS report to the agency concerned contained several very improbable allegations and conveyed a negative view of the complainant's reliability that was largely unsubstantiated.

While the Committee could not say what conclusion the Deputy Head would have reached had a different report been provided, the points we identified as determinative of the Deputy Head's decision were found to be poorly supported or not supported at all. It is conceivable, therefore, that the Deputy Head's decision would have been different had the Service delivered a less tendentious brief. The Committee found nothing in the complainant's political convictions or actions in pursuit of those convictions that should have caused the Deputy Head to deny the security clearance upgrade.

The Committee recommended that in future the Service prepare official transcripts of the security screening interviews it conducts or, alternatively, prepare a written summary for signature by the interviewee.

Notes

Notes

1. “Spy probe of China was aborted, Project examined Beijing’s role in Canadian business and politics,” *Globe & Mail*, September 30, 1999.
2. See “CSIS Cooperation with the RCMP—Part I,” 1997–1998 SIRC *Annual Report*, and “CSIS Cooperation with the RCMP - Part II,” 1998–1999 SIRC *Annual Report*.
3. During the course of its review, the Committee was able to reconstruct the identity of some of these (Sidewinder first draft report, for example), by gaining access to various Sidewinder files the RCMP had retained.
4. The Committee learned quite late in the course of its inquiries that unbeknownst to CSIS management, a Service employee had retained in his own files a copy of the first draft Sidewinder report and some supporting documents.
5. “Project Sidewinder Analytical Project Plan,” March 1997.
6. Measures adopted during the G7/P8 Ministerial Conference on Terrorism, Paris, June 1996.
7. Specifically, provisions in the *Canadian Charter of Rights and Freedoms* and certain limitations inherent to the *Criminal Code*.
8. See “CSIS Cooperation with the RCMP—Part I,” SIRC *Annual Report* 1997–1998, pp. 30–31.
9. CSIS exchanges information with these domestic agencies for purpose of threat assessments.
10. “Proliferation Issues,” *Background Series*, CSIS, no. 7, May 1999.
11. “Sensitive institutions” refers to trade unions, the media, religious institutions and university campuses.
12. A replacement warrant is required when the Service changes the targets, the places or the powers of an existing warrant, or when an existing warrant expires and the Service wishes to continue the investigation using methods for which the Court’s approval is necessary.
13. EXIPC was created in 1987 and had rarely met in recent years.
14. Following a formal request by the RCMP, CSIS discloses information or intelligence in a format that protects the identity of sources and the methods of operation. The disclosure includes a provision directing that the information be used only for investigative leads, not in judicial proceedings.

15. Following a formal request by the RCMP, usually subsequent to a disclosure letter, CSIS Headquarters gives permission to use Service information in judicial proceedings such as warrant applications and evidence at trial.
16. “*National Security Offences Review Report*,” RCMP Audit and Evaluation Branch, June 17, 1999.
17. *CSIS Cooperation with the RCMP - Part I*, October 16, 1998; *CSIS Cooperation with the RCMP—Part II*, February 12, 1999 (SIRC Study 1998-04); and *Review of Transnational Crime*, (SIRC Study 1998-01) August 25, 1999.
18. A dormant arrangement is one in which there has been no contact for one year or more. Liaison arrangements 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.
19. The Communications Security Establishment is an agency of the Department of National Defence. As described by the Communications Security Establishment Commissioner in his 1999–2000 *Annual Report*, the CSE “provides the Government of Canada with foreign signals intelligence (SIGINT) which it obtains by gathering and analyzing foreign radio, radar and other electronic emissions . . . the CSE also provides advice on the security of the government’s information technology.”
20. The format and content of Ministerial requests for assistance is governed by the 1987 tri-ministerial agreement on section 16 activities. “Memorandum of Understanding on Section 16 of the *CSIS Act*,” signed by the Minister of Foreign Affairs, Minister of National Defence and the Solicitor General.
21. This number includes 6701 requests for security screening of applicants based in the United States.
22. When the Service believes that it is not in a position to render a recommendation to CIC concerning a citizenship application, it must seek approval from the Solicitor General to continue investigating the case and “defer” providing the assessment.
23. This number includes the 4415 requests for assistance.
24. The majority (81) of applicants were from within Canada, whereas only 28 were overseas applicants.
25. The Bench was composed of Justices Linden, Robertson and Sharlow. Justice Sharlow rendered the reasons for judgment of the Court.
26. R.S.C. 1985, c.1-2.

27. Gibson J. refers to the following quote, found at [1996] 1 F.C. 174 (F.C.T.D.) at 241, as the grounds for the decision of MacKay J.: “. . . paragraph 19(1)(g), in so far as it relates to “persons who there are reasonable grounds to believe . . . are members of . . . an organization that is likely to engage in . . . acts” (“of violence that would or might endanger the lives or safety of persons in Canada”), contravenes paragraph 2(d) of the *Charter of Rights and Freedoms* [hereinafter the *Charter*] which ensures, to every one, freedom of association. I find it is not established that this limit freedom under the impugned portion of the paragraph in issue is a reasonable limit demonstrably justified in a free and democratic society. I note that this determination does not relate to other classes of persons described in paragraph 19(1)(g) of this Act.”
28. More specifically, it was argued that the use of “subversion” and “democratic government, institution and processes” in section 19(1)(e) is “vague and not capable of being given a consistent and settled meaning” and is therefore inconsistent with section 7 of the Charter and the principles of fundamental justice; that the term “subversion,” as used in section 19(1)(e), infringed Mr. Yamani’s freedom and equality rights under sections 2 and 15 of the *Charter* by being overly broad and lacking “definitional boundaries” and that the phrase “reasonable grounds to believe” in sections 19(1)(e) and (g) established an “illusory standard of defense” which violated the principles of fundamental justice under section 7 of the *Charter*.
29. Gibson J. held the phrase “subversion” was “incapable of framing the legal debate in any meaningful manner or structuring discretion in any way” and thus infringed on Mr. Yamani’s rights under section 7 of the Charter, however, it was saved under section 1 of the Charter as reasonable, prescribed by law and demonstrably justified in a free and democratic society. The court also found “subversion” was not so lacking in definitional boundaries and overly broad to result in an infringement of freedom and equality rights under sections 2 and 15 of the Charter. Regarding the phrase “democratic government, institutions and processes,” the court held it was not so vague as to be incapable of being given a consistent and settled meaning, nor is it lacking in definitional boundaries or overly broad. He found no merit in the argument that the phrase “reasonable grounds to believe” provides an “illusory standard of defense” and held its use was not inconsistent with the principles of fundamental justice under section 7 of the Charter.
30. *Shandi (Re)* (1992), 51 F.T.R. 252.
31. Gibson J. noted that Mr. Yamani’s testimony indicated “evasiveness and a willingness to lie” and quoted the following from Mr. Yamani’s testimony (which he found at p.17 of the Committee’s Report): “As a Palestinian who lives in Lebanon and was born in Lebanon, I am not allowed to go back to the West Bank, and I am not allowed, maybe in two years, to go back to Lebanon. I might be deported from Canada. You do not want me to lie? To survive as a human being and to survive for my children, no, I will lie and I will lie and I will lie to protect myself. And I will lie without hurting anyone because I told you, I am not that kind of person who is stupid to go and do whatever activities.”

32. SIRC *Annual Report*, 1997-1998, p. 11.
33. The Committee has been informed that CSIS and CIC have implemented this recommendation and now provide two to eight weeks written notice, depending on the location, and that the convocation letter specifies that the interview will be with a CSIS employee. It is Service policy not to raise objections to the presence of a third party observer.
34. The Committee recommends that the notice refer to the legislative mandate and state that the Service will be conducting the interview in order to issue advice to CIC in determining the applicant's admissibility in light of the inadmissibility classes of section 19 (1) of the *Immigration Act* and the definition of "threat to the security of Canada" as defined in the *CSIS Act*.
35. This recommendation was also made in the report *In Flux But Not In Crisis* by the House of Commons Special Committee on the Review of the *CSIS Act* and the *Security Offences Act*, September 1990.
36. The Service's policy states: "An interview with an immigration applicant may be taped by an investigator only with the consent of the applicant or under the authority of a warrant. The investigator must not object should an applicant wish to tape an interview. In such circumstances, the investigator should also ensure the interview is taped". The Service contended that, as consent would not be forthcoming in all cases, this recommendation could not be equitably applied.
37. The Service's process has been changed since the issuance of the Committee's reports. Currently, reference material used to provide information and advice to CIC is scrutinized for accuracy under a three-tier review mechanism. This mechanism also provides for regular consultation with the Counter Intelligence Branch (CI) and Counter Terrorism Branch (CT) subject matter experts and, as required, by legal counsel. The Service believes it has sufficient levels of control in place to ensure accuracy, thoroughness and efficiency.