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[Aller au sommaire du numéro](#)

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## In Crisis and in Flux?: Politics, Parliament and Canada's Intelligence Policy <sup>1</sup>

by *A. Stuart Farson*

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### INTRODUCTION

There have been dramatic changes over the last twenty-five years in how Canada's intelligence community has been overseen by both the executive branch of government and the legislature. Initially, these changes resulted from a number of crises. <sup>2</sup> More recently, however, changes have been, and are being, instigated by the activities of Parliament itself. In the early 1970s the government's response to domestic terrorism in Quebec focused attention on both the propriety and efficacy of the country's Security Service, which was then under the Royal Canadian Mounted Police (RCMP). Subsequent actions by the Security Service to deal with separatist movements in Quebec focused attention on the relationship between the Service and the government, and on the oversight of the intelligence community by Parliament. Following a public inquiry dramatic changes in the way domestic intelligence matters were handled were put in place. In 1984, the Security Service was severed from the RCMP and a new civilian agency the Canadian Security Intelligence Service (CSIS) was formed in its place. This was the first, and so far only, intelligence agency in Canadian history to be established by statute and formally provided with mechanisms independent of the executive for holding it accountable. When a Special Committee of the House of Commons conducted a five-year review of the legislation in 1989-90, it found that Parliament's capacity to hold the intelligence community accountable was extremely limited. <sup>3</sup> Furthermore, its recommendations for reform were very largely ignored.

Recent public opinion poll data suggest that the Canadian Parliament is facing what some perceptive MP's have recognized as "a crisis of relevancy." <sup>4</sup> In their view, Parliament's legitimacy has been eroded in the eyes of the country's citizens. It has failed to fulfil its original purpose and has not done those things that the Canadian public now expects it to do. For instance, many currently believe that Canadian parliamentarians are more than partly to blame for the country's deficit crisis and the current malaise. They have to all intents and purposes failed to monitor the federal government's expenditures. Similarly, they have been unable to provide any real check on the ever growing federal bureaucracy. In addition, institutionalized partisanship has placed constraints on the freedom of MP's to pursue important issues and has led to sterile debates in the House of Commons on key issues that have been ineffective at best.

Recent events suggest, however, that while the crisis of confidence may not be over,

some parliamentarians have taken important steps to rectify matters. These have included: disallowing Cabinet Orders,<sup>5</sup> rebuking the Cabinet for providing illegal exemptions regarding the application of laws,<sup>6</sup> citing the government for contempt of Parliament,<sup>7</sup> and compelling Ministers to disclose documents.

This article is concerned with the lessons that Parliament learned from the five-year review process and the precedent that actions to compel disclosure have subsequently had on the oversight of security and intelligence in the related "McInnis" and "Bristow" affairs.<sup>8</sup> It argues that procedures followed by Parliament in investigating those events have differed substantively from previous ones. Before dealing with the affairs in some detail, the article briefly lays out the problems of oversight that were identified in the 1970s, the essential features of the proposals provided by the McDonald Commission for reform, how the government failed to respond to certain key elements, and the shortfalls in oversight that were revealed by the five-year review process.

## **BACKGROUND: LESSONS FROM THE 1970s**

During the 1970s Canadian intelligence was placed in crisis on two specific occasions. The first was in 1970 when the Liberal government of Pierre Trudeau used the *War Measures Act* to respond to what it considered to be insurrection in the making by separatist terrorists in Quebec. In hindsight, while it is still unclear whether there was an intelligence failure, it now seems evident that the government overreacted significantly. In any event, the net results of the government's response were two-fold. On the one hand, the government found itself embarrassed by its own activities and told the RCMP Security Service that it wanted to be better informed about such threats in the future. On the other hand, the revelation in the media that some 465 persons had been arrested under the emergency provisions and only a handful brought to trial suggested that the civil rights of many Canadians had been severely abused. Such abuse at home, coupled with media coverage of the American civil rights movement and Watergate below the border, encouraged a growing interest in providing further guarantees for civil liberties. Such protections against state power were eventually provided when Canada patriated its constitution from Britain and included the *Charter of Rights and Freedoms* in the *Constitution Act, 1982*.

The second event, or rather events, that placed Canada's security and intelligence community into crisis was a series of revelations about questionable activities committed by the RCMP Security Service in the Province of Quebec. The practices in question largely concerned efforts to counter the activities of separatist groups and included the questionable use of informers. Though the national media largely failed to pick up on a story that had initially been filed by John Sawatsky in the *Vancouver Sun*, Parliament was forced to take notice when the government of Quebec announced that it was setting up a provincial inquiry into the activities of the police in that province.

It soon became evident that opposition parties would have considerable difficulty in getting a responsible minister to respond to the difficult questions that naturally ensued during question period. Part of the problem was that the ministerial portfolio responsible

for the RCMP Security Service was not similar in status to the Secretary for the Home Department in Britain and only seemed to be a "bad news" responsibility. As a result, ambitious ministers had a propensity to move on as quickly as they were able from the Solicitor General's portfolio. In the early years, few stayed long enough to learn about the intricacies of their department's programs. To some outsiders the portfolio seemed like a revolving door that the Trudeau government used to good effect whenever the political heat rose too high in Parliament. With incumbents being regularly shuffled on to new responsibilities, their replacements claimed that they could not be held responsible for events that had not taken place on their particular watch. In 1977, the then Speaker of the House of Commons made a ruling that has stood as an important precedent ever since. The effect of the ruling was two-fold. On the one hand, it made former Solicitors General no longer answerable for the ministry's affairs once they had left the portfolio. And on the other hand, it excused the current incumbent from being responsible for the actions of previous office holders. The practical effect of this ruling was, of course, to put past actions outside the net of parliamentary accountability.<sup>9</sup> The impact of a further ruling by the Speaker a year later gives an indication of the tenor of the House at the time. At issue was a letter sent by a former Solicitor General about mail opening, which at the time was not provided for by law. It had assured an MP that the RCMP did not open mail. Subsequent evidence, however, had shown this assurance to be false. In this instance, the Speaker ruled that the MP had, in fact, been misled and that there was a question of privilege. For its part, the government voted down a motion to send the question to committee for study, arguing that the McDonald Commission was already looking into the matter. Furthermore, it argued that the Solicitor General could not be held responsible for misleading the member because the information had originated with the RCMP.<sup>10</sup>

## **THE REFORM PERIOD**

After several years of deliberation, much research, and significant public and media interest, the McDonald Commission of Inquiry into the events of the mid-1970s recommended that the Security Service be severed from the RCMP and reconstituted as a civilian organization by statute under the Solicitor General. To ensure that the executive branch would provide an adequate level of control, it recommended that the Minister be made specifically responsible for the control and management of the new agency and that he or she be fully accountable to Parliament for its activities.

To ensure that Parliament could properly fulfil its watchdog role, the McDonald Commission adopted a two-tiered approach to the problem of providing full and direct accountability to Parliament. The first tier was to be a small Advisory Council on Security and Intelligence (ACSI) with its own expert staff.<sup>11</sup> This body was intended to have no executive power but to have full access and independent investigatory authority to the various agencies in the community. Its purpose would be to provide a continuous after-the-fact review of all intelligence agencies to ensure that their activities were lawful, morally acceptable, and within the statutory mandates provided by Parliament. In terms of its reporting function, it would have reported to the Solicitor General on a continuous basis and to Parliament at least twice a year. The second tier would have been a Joint Parliamentary Committee on Security and Intelligence (JPCSI).<sup>12</sup> Its purpose would be

to examine policies and practices of the security and intelligence community in more depth than the Standing Committee on Justice and Legal Affairs. That committee's capacity had historically been flawed for a variety of structural reasons. Not only was it too large but its membership fluctuated. Also, restrictions on the time available to each questioner prevented individual members from fully developing particular lines of inquiry. By contrast, it was intended that the JPCSI should be small, consist of members specially chosen by their leaders and have a specialist support staff to assess the annual financial estimates and reports of the various agencies. It would differ from the ACSI in that it would be as interested in efficacy as it was in propriety and legality, do much of its work *in camera* and have its staff and members vetted in some way.

In addition to these structural concerns, the McDonald Commission believed that the two-tiered approach would prevent intelligence agencies being used for partisan or personal interests. Its independent powers of investigation would permit ACSI to discern whether any agency was being given improper executive instructions. Similarly, by having direct access to the joint parliamentary committee, ACSI's check on the partisan or personal use of intelligence would be a credible one.

The government accepted a two-tiered response, but not the one advocated by the McDonald Commission. Their draft legislation (Bill C -157) included an independent review agency similar to ACSI which the government named the Security Intelligence Review Committee (SIRC) but with a review capacity that was limited to the new service alone and without the crucial right to speak *directly* to Parliament. In addition, the draft legislation provided for a further oversight body the Inspector General of CSIS (IG) who would report to the Deputy Solicitor General and specifically certify, on an annual basis, whether or not CSIS had operated within its mandate.

The McDonald Commission's scheme for ensuring full accountability to the House of Commons was, however, not heeded. Its recommendation had taken full account of the frailties of the parliamentary system. Instead of having a parliamentary committee with direct access to the new Canadian Security Intelligence Service, it had recommended having a permanent independent body that would report to Parliament. A crucial advantage of this scheme was that it would have permanent members and expert staff, would be able to work while Parliament was not sitting, would have complete access to all CSIS files and personnel, and yet provide a parliamentary committee with detailed reports and answer questions, albeit *in camera*, with impunity.

The government did not follow this recommendation. Instead it provided only the Security Intelligence Review Committee, an independent body with no codified basis for speaking directly to Parliament. Instead, the flow of information was to be channelled through the minister to Parliament. While SIRC's annual report had to be tabled in Parliament, there was no obligation on the Solicitor General to publish any of the other reports that the minister's office might order or those that SIRC itself might decide to prepare.

Significantly, while the Special Senate Committee that reviewed Bill C -157 improved

many aspects of the bill, it did little to improve accountability. The significant exception, however, was its recommendation to have Parliament review the legislation after the act had been in operation for a period of five years, a point which the government accepted.

## **THE FIVE-YEAR REVIEW: DEFICIENCIES IDENTIFIED**

What is often missed about the five-year review process is that it was statutorily established. In fact, Parliament was required by the legislation to establish a committee to conduct a "comprehensive review of the provisions and operation" of both the *CSIS Act* and the *Security Offences Act*. Furthermore, it was obliged to report on its review and present any recommendations it considered necessary to Parliament. <sup>13</sup>

In September 1990, the Special Committee that conducted this review tabled its report. The title of the report *In Flux but not in Crisis* reflected the Special Committee's opinion that CSIS had emerged from the various crises that had enveloped the agency following four significant revelations: that it had destroyed tapes related to the Air India investigation; that it had made faulty wiretap applications in the investigation of militant Sikhs (which respectively led to the first Director's resignation); that one of its informers on the labour movement had been arrested for conspiracy to bomb hotels involved in a Quebec labor dispute; and that SIRC was concerned about CSIS's corporate culture and believed the large number of active counter-subversive files posed a potential threat to civil liberties (which respectively led the Solicitor General to establish the Independent Advisory Team (IAT) on CSIS). <sup>14</sup>

Before it started its investigations the Special Committee took steps to establish what its terms of reference implied. It determined that its primary role should be to establish whether all of the office holders and institutions identified in the two acts were fulfilling their statutory duties. This specifically meant that the Special Committee should look as carefully at the minister, his staff and the oversight bodies as it did CSIS and the intelligence community.

In all, the Special Committee made some 117 recommendations. While many of these were of a housekeeping nature, several were crucial to improved accountability and were related directly to the Special Committee being denied access to documents that it believed were critical to conducting its review. In particular, the Special Committee was denied access to ministerial directives to CSIS, the annual reports of the CSIS Director, CSIS's regulations and policies, SIRC reports, and the certificates of the Inspector General and that office's reports. In the Special Committee's view, these constituted the minimum necessary to provide a comprehensive review of the provisions and operation of the legislation as Parliament's statutory mandate required it to do. Without seeing them, it was virtually impossible to establish whether the various actors in the system were fulfilling their respective statutory mandates and whether the system of accountability put in place by the legislation was working.

The Special Committee drew attention to the singular importance of ministerial directions. In particular, it took careful note of what the IAT report had said regarding

this matter generally and about the management of human sources specifically. It is important to observe that the Special Committee was only provided with an oral presentation about these directions, which was conceptual in nature, and without the benefit of staff being present. Furthermore, it was led to believe that significant progress had been made through written directions:

to limit the scope and intensity of the security intelligence net; to define the principles and policies governing the conduct of investigations, *especially those using human sources*, and to reconfirm the roles and responsibilities of the major office holders in the national security framework. <sup>15</sup> (emphasis added)

In hindsight, it appears that it may have been misled about the actual progress being made, not only by the government but by SIRC's 1988-89 annual report as well. <sup>16</sup> Nevertheless, the Special Committee made important recommendations about ministerial directions. It specifically recommended that the minister be obliged to table a report once each fiscal year on the written directions provided to the Service and that a committee review these directives at an *in camera* session. In addition, it strongly recommended that the *CSIS Act* be amended to require SIRC to review ministerial directions with a view to compliance and to establish whether the directions constituted adequate and appropriate instructions for the Service. <sup>17</sup>

With regard to SIRC, the Special Committee had a particular interest in establishing its research capacity. Starting from a version of SIRC's most recent special report to the minister that had been released under the *Access to Information Act*, it tried to assess its level of expertise. From staff interviews conducted with persons mentioned in the report, the Special Committee concluded that SIRC's research techniques were not as sound as it would have wished. And when questioned on the issue by the Standing Committee on Justice, SIRC concurred with this assessment but claimed it was an anomaly. <sup>18</sup> For this and other reasons, the Special Committee recommended that the Justice Committee establish a Sub-committee on National Security with a small, expert, full-time, security-cleared research staff. It believed that this body should meet *in camera* in a secure environment and that party leaders attempt to ensure continuity, security and integrity of membership. While it did not consider that the Sub-committee should replace SIRC, it did believe that it should have access to both SIRC and the IG's reports and all their personnel. In addition, it recommended that it should appraise the director's annual report, consider the budgets of security and intelligence organizations and conduct reviews of a general nature that fell outside the specific mandates of SIRC and the IG.

The Special Committee was also specific about changes it wanted to see regarding the Communications Security Establishment (CSE). It wanted Parliament to establish the agency by statute and to make SIRC responsible for monitoring, reviewing and reporting to Parliament about its activities and its compliance with the laws of Canada. Underpinning this recommendation was the belief that there should be one piece of national security law with one centralized oversight mechanism for the whole of the intelligence community, not a series of agency-specific arrangements. Had this recommendation been followed, Parliament would no longer encounter the problems of the past. Hitherto, different committees, with different priorities and levels of interest,



had attempted to oversee the various elements of the community. Such a process had made it impossible, as the case with the CSE had amply shown, to get the responsible minister to answer questions before the Special Committee. <sup>19</sup>

## **EXECUTIVE AND LEGISLATIVE BRANCH RESPONSES**

Since the parliamentary reforms that followed the submission of the McGrath Report in 1985, the government of the day is obliged to reply to any parliamentary report that specifically requests one within a set period of time (now 120 days). In its obligatory response to the Special Committee's report, <sup>20</sup> the government declined to change the formal accountability structure to Parliament or to address any of the legislative changes that the Special Committee recommended. However, it did say later that it had fulfilled many of them through policy changes, though in most instances there is little evidence of this having occurred. <sup>21</sup> On issues of accountability, the only change supported by the government was the provision of a public annual report by the CSIS Director. For many, this annual exercise is now perceived as more of a public relations mechanism than a tool by which Parliament can hold the Service to account.

For its part, Parliament decided to ignore the government's lack of enthusiasm for a special sub-committee on national security and established one anyway. It should be noted, however, that in the period up to the general election in 1993 the Sub-committee on National Security of the Standing Committee on Justice and the Solicitor General did not follow the various recommendations governing its establishment that the Special Committee had made. It did not hire its own small, expert, full-time research staff or employ its own administrative support staff to conduct research and analyse material under the direction of the subcommittee. Nor did it security clear the existing staff of the Justice Committee and place it under oath. It never obtained access to the budgets of security and intelligence organizations. It never obtained full access to the reports of SIRC or the Inspector General. It never took special steps to meet in a secure environment, to keep its notes and documents in a place of safekeeping, or to hold *in camera* sessions. Nor was any mechanism put in place to ensure that members would not divulge information.

To all intents and purposes it was a smaller version of the Standing Committee on Justice, only with all the added problems of conflicting and competing schedules. Though a work plan for action was developed from that left by the Special Committee, no effort was made to extend its oversight. With the exception of some preparatory work on the CSE (see below), staff were no more involved than they had been before. While the Sub-committee met perhaps once or twice more than the Standing Committee would have done on security or intelligence matters, the subjects discussed indicate no difference in approach. No attempt was made to analyse budgets. Similarly, the Sub-committee made no effort to gain access to other intelligence organizations or to resolve issues that ran across departmental, and hence, committee boundaries.

## **THE JUSTICE COMMITTEE TAKES A STAND**



While the actions of the Conservative-dominated Sub-committee were decidedly uninspiring to say the least, important progress toward greater parliamentary accountability was made in other directions. In December 1990, the all-party Justice committee reported unanimously in a non-partisan manner to the House of Commons that the Solicitor General had failed to deliver unexpurgated versions of reports provided to the Correctional Services of Canada concerning the escape of Daniel Gingras and Allan Legere as ordered by the committee earlier in the month. Further, it asked the House to adopt an Order requiring the Solicitor General to provide the documents within 30 days to the committee. In support of its position, the committee cited section 8(2)(c) of the *Privacy Act*, section 18 of the *Constitution Act, 1867*, section 4 of the *Parliament of Canada Act*, and section 108(1) of the Standing Orders of the House of Commons, which provided Parliament with the right to "send for people, papers and records." The committee's chair asked for unanimous consent to move concurrence but this was not given, the government having argued that the Solicitor General was restrained by the *Privacy Act* from releasing the information requested. To expedite the logjam, the issue was subsequently raised as a question of privilege by Derek Lee, a former member of the Special Committee who had been its architect in the Standing Committee. This question was referred to the Standing Committee on Privileges and Elections. That committee duly noted that the power to call for people, papers and records was absolute, that the House of Commons could issue an order that was enforceable and that anyone disregarding that order could be called before the bar of Parliament and cited for contempt or otherwise punished.<sup>22</sup> Following the submission of that report, the House of Commons by unanimous consent ordered the Solicitor General to provide the Justice Committee with the necessary reports at an *in camera* meeting. The Solicitor General subsequently complied with Parliament's order, the meeting being held with all the procedural protection normally afforded *in camera* meetings, including a ban on publication of the proceedings of the committee as well as any information in the reports that might be protected from disclosure under either the *Privacy Act* or the *Access to Information Act*. The committee concluded that the government had acted properly and that staff had not tried to cover up any improper actions. It therefore completed the accountability function, fulfilled Parliament's watchdog role and went a long way to restore public trust in key government institutions.

### **THE McINNIS-BRISTOW AFFAIR<sup>23</sup>**

On 14 August 1994, the *Toronto Sun* announced that Grant Bristow, a supposedly well-paid CSIS informer, had not only infiltrated Canada's extreme right but had helped found with the taxpayer's money, a white racist organization called the Heritage Front. Within a matter of days the accusations against CSIS had broadened to include using Bristow to spy on reporters investigating racism in the Canadian Forces in Somalia, infiltrating the Reform Party with a view to undermining that party by fostering links to racist groups, as well as spying on the Postal Workers Union and the Canadian Jewish Congress.

Equally quickly, there were demands for inquiries and promises to conduct them. According to the Executive Director of SIRC, the Review Committee was eager to prove itself equal to the challenge. It announced that it would be conducting an investigation

and submitting a report to the minister. Likewise, the Sub-committee on National Security noted that it would also be conducting an investigation but did not plan to call witnesses from CSIS. Significantly, it said that it planned to discuss SIRC's investigation with them.

Less than two weeks later Brian McInnis, a former political advisor to Douglas Lewis when he was Solicitor General, acknowledged that he had "leaked" a confidential CSIS memorandum to a newspaper reporter on which the story had been based. McInnis had blown the whistle because he found it "reprehensible and wrong" that CSIS had an informant in the white -supremacist group.<sup>24</sup> Apparently, McInnis had chosen to release the information to the media because he wanted to ensure that his message got out. While he could have gone to SIRC with his complaint, McInnis denigrated the committee by describing it as "more of a lapdog than a watchdog" that "doesn't seem to have teeth."<sup>25</sup> McInnis was subsequently arrested, his house searched, and some twenty boxes of papers seized by the police. According to a CBC (Canadian Broadcasting Corporation) report some of these documents were very sensitive:

In one, CSIS worries that people will find out that the Security Service spied on postal workers and passed that information on to Canada Post managers all this during a labour dispute. But the most revealing documents, all marked 'top secret' revealed the details of CSIS's relationship with foreign security agencies. One document describes a very close working arrangement with Israel's secret service, the Mossad. There's a chart detailing exactly what kind of co-operation each side gets under what circumstances. There's also information about CSIS's arrangements with countries like Italy and Jamaica. And then there's France, another document tries to answer the question, how closely is the French secret service interested in or involved in the Quebec separatist movement. It concludes that the French secret service has an active interest.<sup>26</sup>

This report suggests that McInnis was in possession of highly sensitive, 'top secret' material. If true, he would have required a level III security clearance, which he apparently did not have.<sup>27</sup>

Clearly, the McInnis-Bristow affair had considerable resonance with past events. On the surface, at least, it appeared that CSIS was back in the counter-subversion business like its predecessor had been and up to similar dirty tricks. Informers were being used not only to infiltrate *bona fide* special interest groups but unions, the media, and legitimate political parties as well.

All this resonance with the past had a particular allure for the media. Perhaps because many in the media did not want to be caught asleep at the switch as many of their colleagues had been in the seventies, many journalists jumped to conclusions without double and triple-checking their sources as prudence suggests in the intelligence field. The CBC is particularly vulnerable to criticism for its coverage of the McInnis-Bristow affair. While the fact that McInnis had highly sensitive information in his possession long after he had stopped being a member of a minister's exempt staff was almost entirely ignored by the media, the CBC's claim that CSIS had spied on postal workers drove the media almost to a frenzy. In fact, an immediate statement by CSIS that the documents which the CBC had seen, referred not to the present but to the activities of the RCMP

Security Service in the 1960s and 1970s, only appeared to add fuel to the fire. When confronted with the taunts of both the CBC and the head of the postal workers to prove it had not spied on the union, CSIS took the unprecedented step of releasing an uncensored version of the house book card it had given to the minister. This indicated merely that the Solicitor General should be aware that certain documents relating to RCMP Security Service activities in the 1960s and 1970s against the postal workers union were now available to the public through the National Archives. Despite this release, several flat denials by the Service,<sup>28</sup> assurances from the Executive Director of SIRC that all groups and individuals targeted by the agency had been closely monitored by SIRC for ten years, and even a telephone call from Brian McInnis to confirm that its reporter had wrongly interpreted a document he had shown him, the CBC was not moved from sticking "100 per cent to its story." It claimed that there was other evidence to support its view.<sup>29</sup> The shoe was now on the other foot. Members of the print media now called for the CBC to prove its case.<sup>30</sup> In a subsequent broadcast, however, the CBC revealed that Bristow had worked inside a postal plant while on the CSIS payroll. This, coupled with the previous allegations and an acknowledgement that their current affairs program, *The 5th Estate*, had been tricked by white supremacists about the activities of alleged CSIS informer Bristow, would all eventually show that the public broadcaster's accusations had been false and misleading.<sup>31</sup>

The CBC was not the only media outlet to get its facts wrong. *The Globe and Mail*, for example, in an article on the McInnis-Bristow affair unfairly claimed that Parliament only had itself to blame for not having access to CSIS files because it created the agency with independent supervision.<sup>32</sup> This argument missed the significance of the battle that routinely goes on between the executive and the legislative branches of government over access to information and contributes to political mythology for two reasons. First, Canadian parliamentarians seldom frame legislation; they largely adopt what the executive branch decides. Though government MP's frequently modify bills before enacting them, government whips prevent changes to crucial issues like parliamentary oversight unless public opinion motivates them to do otherwise. Second, while Parliament has lost most battles with the executive branch over intelligence oversight, it has won the odd skirmish. During their review of Bill C-157, the non-elected senators of the Pitfield Committee were only partly helpful. They declined the advice of almost every witness, except the Solicitor General who opposed the concept, to support an enduring form of parliamentary oversight proposed by the McDonald Commission. Nevertheless, they did recommend the CSIS Act be subject to a five-year review by Parliament. And when the government pressed the revised Bill C-9 through the Commons in 1984, both opposition parties strongly advocated a permanent parliamentary committee. But both they and government members who supported such a body were silenced by closure.

Similarly, *The Ottawa Citizen* failed both to correct an "op-ed" piece written by a former CSIS employee before publication that concerned oversight mechanisms or to print a corrective after it had appeared. In the article, the former chief of strategic planning wrongly asserted that:

. . . pressure will mount for a royal commission. The old saw about having CSIS report to a parliamentary committee as opposed to a minister will be resurrected, a confused notion

that is politically, constitutionally and managerially unsound. Security academics and consultants will hold up the U.S. Congress's intelligence oversight system as a model, despite our constitutional differences and the implications of Iran-Contra.<sup>33</sup> This wrong-headed assertion was presumably a throw back to a rather muddled discussion that Canadians experienced after SIRC described its role as "oversight" rather than review. At issue was whether SIRC had any executive authority to direct changes in CSIS's policies and operations. At the time, that debate reflected much talking at cross purposes. No one, in fact, suggested that either SIRC or a parliamentary committee should usurp the powers of the responsible minister to give directions to CSIS. Rather, the issues concerned the timing of when SIRC should be permitted to receive accounts (before- and during-the-fact, not merely after it) so that the review process could provide an effective watchdog capacity. With this sort of media coverage it was only to be expected that many of the alleged targets and interest groups would call for a public inquiry. It is noteworthy that most groups calling for a public inquiry were not prepared to put their trust either in SIRC or Parliament. They wanted a judicial inquiry like the McDonald Commission.<sup>34</sup> By contrast, the Reform Party alone publicly called for an inquiry by a parliamentary committee. Because of the clear relationship between SIRC members and political parties, the Reform Party deeply distrusted SIRC's capacity to do the job. In its view, SIRC had lost all credibility because its current membership (3 PC's, 1 Liberal, 1 NDP) neither reflected the current composition of the House of Commons nor had been elected to ministerial office.<sup>35</sup> During the Mulroney years, membership in SIRC had become a patronage plum of significant importance because of the title 'privy councillor' that went with the part-time sinecure.<sup>36</sup> Most appointments, particularly those on the Conservative side, instead of bringing intelligence expertise or other relevant experience to bear, primarily reflected strong party loyalty or allegiance to the leader. As a result, because the Progressive Conservative Party clearly had the most to gain from damaging the Reform Party's reputation prior to a federal election, the latter had good reason to be concerned about SIRC's willingness to pose the important questions that needed answering.<sup>37</sup>

### **SIRC's Report on the Heritage Front**

In many ways, SIRC's Report on the Heritage Front was the most critical of its career. Clearly, if it did not produce a credible analysis, it would be unlikely to recover from the subsequent lack of confidence. However, the report does a great deal to redeem SIRC as an effective oversight body. Its review, completed at a record-setting pace in less than four months, not only answers most of the specific questions posed to it, but is one of the most detailed and carefully documented yet released. Quickly made public by the Solicitor General with only deletions regarding the payment of human sources, the report generally paints a picture of CSIS as an efficient and effective organization that pays careful attention to its statutory mandate and the written directions it receives from its minister. Specifically, the report cleared CSIS of the major charges levied against it. CSIS did not spy on the CBC. It did not try to infiltrate the Canadian Jewish Congress, the Reform Party or the Canadian Union of Public Employees. And, most important of all, CSIS was justified in trying to penetrate the extreme right with a human source. While he did not break the law nor found the Heritage Front, he did provide the

government and local police forces with useful information, and played an important role in having certain extremists arrested and deported. In short, the source and his handler, in SIRC's words, deserved Canada's thanks, not its condemnation. <sup>38</sup>

But the report is not all glory for SIRC or those who wanted it quickly made public. Some of the bigger, more philosophical questions remain unanswered. Particularly nagging is the question of whether CSIS should have used a human source in the way it did. To infiltrate an organization is one thing; to play a leadership role in it is quite another. Similarly, to say that it saw no evidence of the Progressive Conservative government instructing CSIS to infiltrate the Reform Party or of a Conservative Party conspiracy "with or without CSIS," begs another question. Would SIRC necessarily have seen such instructions? Would not such discussions, had they occurred, have taken place outside SIRC's statutory purview, well inside some tightly shut political office? Given the difficulties of proving the negative that there was no conspiracy should not SIRC have been somewhat more measured in its finding? <sup>39</sup> And what of the decision not to tell the minister that Heritage Front members had infiltrated the Reform Party and the minister's subsequent position that he was not obliged to tell Reform and that they were quite capable of doing their own security? Does this not warrant at least some specific commentary about the need for specific ministerial directions in politically-sensitive cases? As well, their criticism of the media generally and CBC's accusation that CSIS infiltrated the Canadian Union of Postal Workers in particular, was muted at best. <sup>40</sup> Given that the media has a formidable capacity to undermine public trust in democratic institutions as well as enhance them, was this not worthy of even more spiked commentary? And what of SIRC's position that greater policy guidance is needed concerning the use of human sources? Is not this observation just a shade late given the strong recommendations that the Special Committee had made on this score in 1990? In addition, SIRC is silent on what must be an important point related to a service employee providing early-warning information directly to the Reform Party. Is it appropriate for service employees to take an active political role, as this individual did, in electoral campaigns? And, did not this action deserve some critical commentary? <sup>41</sup> Finally, the cynical must ask why this report was made public with such haste and almost in its entirety. Clearly, it paints a positive picture of both CSIS and SIRC, two institutions established in the dying moments of the last Liberal administration that had come under fire during the Conservative years. Would the new government have been so ready to publish SIRC's findings had they not been the bearer of such good news?

### **Parliament's Action**

While it is still unclear whether the Sub-committee on National Security (SCNS) will ever report on the actions of Grant Bristow, the SCNS has already taken both positive and negative steps. On the positive side, five points can be singled out. First, the SCNS started its analysis of the McInnis-Bristow Affair in a way that was quite different from previous reviews. At one of its earliest public sessions, it provided SIRC with a list of questions it wanted answered. At an executive session, the SCNS was provided with a briefing by counsel on the constitutional basis of parliamentary powers. This, together with the fact that it focused all its attention and resources on the matter, suggested that



the SCNS intended both to play a more activist role and to make this exercise a showcase of what it could do. While, the structure and answers provided in SIRC's report suggest that this objective has been partially accomplished, the delay in completing its report and tabling it in Parliament seriously question the Sub-committee's capacity.

Second, the Sub-committee has seriously challenged the 1977 precedent that effectively prevented former ministers from answering questions when it was in the government's interest for them to be silent. It did this by getting former Solicitor General Douglas Lewis to give evidence. Though he is now out of politics, his testimony provides an alternative precedent to the shackles imposed by the Speaker's ruling.

Third, the SCNS is now using lengthy executive sessions with its research staff present to go through the reports of SIRC and the Inspector General in detail. Such executive sessions are a well-used feature of the American congressional intelligence oversight system, which the Special Committee had duly noted when it visited Washington. These were conducted, as is fitting for sensitive matters, at *in camera* meetings. Though it was understood that public sessions would subsequently provide a record of the essential details without revealing sensitive security-related information this objective was not always followed.

Fourth, the SCNS has adopted tactics used by the Special Committee in 1989-90. It has followed up testimony provided in hearings with detailed questions requiring written responses. This has proven invaluable to staff (who have to write committee reports) for a variety of reasons. It has alleviated the structural restraints imposed by committee procedures, particularly insofar as time limits prevent a line of questioning from being developed and witnesses can employ the old tactic of running out the clock by giving lengthy preliminary statements and long-winded answers. In addition, it provided staff with an opportunity to develop lines of questioning not touched on by committee members and to fill in the gaps left in testimony.

Finally, the SCNS's very first report, which dealt with document and personnel security,<sup>42</sup> has been influential. According to the government's obligatory response, the government has acted on, or is about to act on, four of the five recommendations made by the SCNS. Most importantly, the exempt staff in minister's offices are now to come explicitly under the government's administrative security policy.<sup>43</sup>

However, not all of the SCNS's moves have been constructive. Though getting Lewis to testify was an obvious coup, it is evident that he was handled with kid gloves. When he claimed that he could not answer certain questions for reasons of law, no one pressed him on the issue, offered him a secure environment in which he could have testified, or reminded him of the substantial powers of Parliament to call for people, papers and records. Also, the Subcommittee chose not to call other former Solicitors General.

Similarly, the SCNS did not force the issue with Lewis's former deputy minister. Though the Sub-committee threatened to subpoena witnesses, Peter Harder, the Deputy Solicitor General from 1991 to 1993, refused to testify, indicating that it would be inappropriate

for him to appear before the committee on grounds that he was no longer responsible for the administration of the department.<sup>44</sup> Unfortunately, the Sub-committee accepted this argument and in so doing established another unfortunate precedent. It should be noted that the testimony of Jean Fournier, the deputy at the time of the inquiry, was that he could not answer fully whether there was any intention to discredit the Reform Party. Obviously, he could respond only on the basis of the written records that remained in departmental files. He could neither answer for the oral record nor for the written records of the minister that were shredded on leaving office. Significantly, Harder's testimony could perhaps have put to rest the possibility of a conspiracy.

The SCNS also decided not to ask either Bristow or McInnis to appear. While obtaining testimony from Bristow was not so vital because he had been interviewed extensively by SIRC, the decision not to hear from McInnis was incredible. True, police investigations continued for most of the time that the Sub-committee conducted its inquiry into administrative security policy.<sup>45</sup> However, this is an unconvincing argument for not hearing from a key witness like McInnis. As careful parliament watchers know only too well, "continuing police investigations" and "*sub-judice*" claims have been used very broadly as mechanisms for preventing parliamentary discussion of politically-sensitive topics.

McInnis's testimony was needed for two important reasons. First, and perhaps foremost, McInnis decided to go to the media not to SIRC, which is ostensibly there to hear from would-be whistleblowers about events such as these. Furthermore, in explaining his decision he described SIRC as a toothless lapdog, not a watchdog.<sup>46</sup> Given that he supposedly had a unique eye on the CSIS-SIRC relationship and made such disparaging remarks, Parliament needed to examine the basis for his decisions and any political motives he may have had. Secondly, McInnis's testimony was needed to learn what if anything he knew about Bristow's actions. In all likelihood, this would have been very little, as Derek Lee suggested publicly at the time. While the experience might have provided little immediate information of value to the Sub-committee, it nevertheless would have made explicit what McInnis' part in the affair really was. McInnis was not the "whistleblower" he purported to be. According to one observer:

He was in the process of releasing classified documents to his friends (in the media) when the Heritage Front Affair erupted. One of the 'leaks' was then published in the Toronto Star, and McInnis fabricated a story to justify his leaking of documents. He hoped, of course, that it would not become public knowledge that he had leaked any more documents than the single House Book card published in the Toronto Star.<sup>47</sup>

If this picture of McInnis is correct, there is an evident inconsistency between the picture of Bristow painted by SIRC's report and the Bristow supposedly perceived by McInnis from the minister's office. This discrepancy obviously goes right to the heart of SIRC's credibility. Arguably, Parliament's responsibility encompasses not only establishing whether the oversight bodies created by the *CSIS Act* are doing their job, but as Parliament's surrogate, whether criticism levied against it, particularly by those inside the executive branch, is warranted. In the latter regard, the SCNS failed miserably to come to SIRC's aid and to fulfil its mandate.<sup>48</sup>



The relationship between the SCNS and SIRC appears to have been rocky from the beginning of the 35th Parliament. Both sides clearly at times adopted a confrontational attitude. Part of this was due to the lack of trust clearly exhibited by members of both organizations. According to individuals who have observed the committee at work, certain members of the Sub-committee have continued to hold the views they had at the start of the process.<sup>49</sup> Perhaps if the Sub-committee had heard testimony from CSIS itself, such rigidity might have been averted. But rigidity and partisan politics were not apparently the only problem. The leaking of the third draft of the Sub-committee's report was more likely the result of in-fighting by government members over how critical the report should be.

At one point, it looked as if Parliament would adopt a more activist position, when a decision was made to discuss a motion to see all of SIRC's previous reports. Such reports provide the only real avenue by which Parliament can check to see whether SIRC is fulfilling its mandate. Nevertheless, it appears that such a discussion has been deferred, if not put off indefinitely.

In addition, there is the broader issue of public access to the Parliamentary record, so essential to the public's trust. Recently, the Standing Committee on Members' Services, for reasons of economy, decided that it should control the decision on whether committees should publish their transcripts. This has led the Board of Internal Economy of the House of Commons, which the Speaker chairs, to effect changes in the way the parliamentary record is published. For the year to 31 March 1996 the House should save approximately \$4.8 million by not publishing an official bilingual version of the Minutes of Evidence or indexes. However, transcribed versions in English and French will be available on a limited basis to MP's, their staff and parliamentary researchers and through them to individuals wanting copies.<sup>50</sup> In addition, the record can now be read on, or down loaded from, the Internet. While this system obviously has advantages in terms of cost savings and in providing speedier access for anyone with a computer or access to a library with on-line services, it is unclear what effect, if any, this decision will have on the broader public access to the parliamentary record.

Another negative dimension that is evident in the Sub-committee is an element of partisanship and individuals not operating as a team, features clearly absent in the Special Committee. In many respects, this is to be expected given the political realities of the current Parliament and the particular nature of this event. Significantly, the current Parliament has two previously unknown parties, one of which is avowedly separatist while being the Official Opposition. The House also contains a very high proportion of new members with no previous political experience. Both of these factors, as may be anticipated, lead not only to an unwillingness to play by Parliament's normally accepted unwritten rules, but to a lack of familiarity with how the traditional parliamentary games are played and under what circumstances. With the Reform Party, the initial element of partisanship was to be expected. They, after all, were perceived by not only members of the party but by numerous outsiders as being the subject of CSIS's efforts and the target of the Conservative government's political attacks. Nevertheless, the sudden provision of a second set of questions given to SIRC by the Reform Party can only have brought a

sense of division to the SCNS when it needed a concerted effort to obtain the government's and the public's trust. Similarly, given the recent revelations about former Parti Québécois minister, Claude Morin, being a paid informer for the RCMP Security Service in the 1970s, the Bloc Québécois could not be expected to stay totally silent with a referendum fast approaching and with the possibility of CSIS being employed to infiltrate sovereigntist political parties, however divided. What is unfortunate and threatens the success of the SCNS in the long run is that the go-it-alone attitude of the Reform Party has continued. Recently, just as the Sub-committee was being reconstituted and deciding on a path of action for the current sitting, the Reform Party member on it decided not to raise her allegation that there had been a Russian 'mole' working in the Security Service for more than two decades, but instead to threaten the Solicitor General with releasing the evidence if he did not investigate the matter.<sup>51</sup>

## **WORK IN PROGRESS: OVERSIGHT OF THE CSE**

During its review of the *CSIS Act* and the *Security Offences Act*, the Special Committee had reason to examine the links between the CSE and CSIS. Despite difficulties in obtaining official answers, this examination revealed that Canada's ultra secret signals intelligence agency had been established by Order in Council, not by statute. And while the Special Committee found no evidence of abuse, it noted that the CSE had the *capacity* to invade the privacy of Canadians in a variety of ways but was "to all intents and purposes unaccountable."<sup>52</sup> As a result, in what was one of its most important recommendations, the Special Committee proposed that the CSE be given a statutory mandate and placed under the constant purview of a revamped Security *and* Intelligence Committee (SIRC). Under these new terms of reference, SIRC would not only conduct its existing responsibilities but would have a broader remit over the entire intelligence community and would report *directly* to Parliament on all matters, including the activities of the CSE, particularly regarding that agency's compliance with Canadian laws.

In the executive branch's obligatory response to the legislature, which was tabled almost five months later, the Progressive Conservative government suggested that it had been considering providing the Minister of National Defence, the minister ostensibly responsible for the CSE, with some additional capacity for reviewing the agency. It went on to note in a rather cavalier fashion that the government would make an announcement when a decision on the most appropriate approach had been made.<sup>53</sup> Subsequent access to information requests lodged before the 1993 general elections suggest that, in fact, little or no action on this particular file was taken by that particular administration.

The lack of visible action by the government led to two important developments. While several MP's tried to develop a Private Members Bill, most gave up because of the difficulty of drafting legislation covering a technological activity about which little was known. However, Derek Lee, a former Liberal member of the Special Committee, tried a different tack. He suggested a statutory amendment to the *CSIS Act* that would have the limited effect of extending SIRC's review and monitoring role to cover the CSE. The Conservative government, however, declined to accept this proposition on grounds that it would have the effect of either diffusing SIRC's role regarding CSIS or diminishing

ministerial accountability.<sup>54</sup>

The second initiative concerned the new all-party Sub-committee on National Security. It formulated a work plan of actions it intended to take in the coming months. One of the first was the development of a staff background paper that posed several questions about the future of the CSE and how and to whom it should be made accountable.<sup>55</sup> While this paper noted the Special Committee's recommendations regarding the accountability of the CSE, it unfortunately failed to draw attention to the fact that the Special Committee had tied its recommendation regarding a monitoring and review role for SIRC to changes in the way SIRC operated, particularly regarding its capacity to report *directly* to Parliament. It was, therefore, quite wrong when it said that similar recommendations had been made by former government officials. In John Starnes' case, the former Director General of the RCMP Security Service, not only did he not envisage a revamped SIRC but specifically advocated handling the amalgamation of the CSE and CSIS by executive order, thus avoiding a parliamentary debate.<sup>56</sup> Similarly, while Jean-Jacques Blais, a former Minister of National Defence and subsequently a member of SIRC, argued for a broader role for SIRC to cover other intelligence agencies, he saw no need to broaden SIRC's capacity to speak *directly* to Parliament.<sup>57</sup> Subsequently, the Sub-committee broke new ground by meeting privately with Stewart Woolner, Chief of the CSE. Immediately following this meeting it heard public testimony from Ward Elcock, one of the two deputy ministers to whom Woolner reported. The testimony of the ever cautious Deputy Clerk of the Privy Council for security and intelligence matters is interesting on at least two scores. First, though his responses normally followed the bureaucratic practice of answering the question while providing the barest of details, he was unusually precise on whether CSIS used the CSE to circumvent its legislation. Having stressed that CSE did not target Canadians, he added: "To be even more specific, CSE does not target Canadians through intercepting their cellular or microwave-link telephone calls or landlines. We do not do that."<sup>58</sup> Secondly, he confirmed that the government was still actively considering whether to increase the system of accountability under which CSE operated.

A further source of pressure for greater accountability came at a much more politically sensitive moment. Following the rejection of constitutional change in the 1992 national referendum, pro-sovereigntist sentiment once again emerged victorious at the polls. On this occasion, however, the federal government had more to cope with than merely a Parti Québécois government in Quebec City; it had to deal with the Bloc Québécois across the floor of the House of Commons as the Official Opposition. It was in this new context that Mike Frost and Michel Gratton chose to publish *Spyworld: Inside the Canadian and American Intelligence Establishments*. Written by a former CSE insider with the help of Prime Minister Mulroney's former press secretary, the book not only alleged that the CSE had acquired "third-party intercepts" of communications between the French government and Quebec's political leaders in the 1970s, but continued to target such communications in the run-up to the sovereignty referendum that was to be held in the fall of 1995.<sup>59</sup> Though the government fiercely denied any illegality, the opportunity provided Lucien Bouchard, the Bloc leader, who had previously served as a minister in the Mulroney government and as Canada's ambassador to France, and presumably knew something of

such matters, with an ideal opportunity to undermine the federal government's credibility in Quebec by claiming that it was hiding the truth and by calling for a royal commission.<sup>60</sup>

At the same time, the Privacy Commissioner, who reports to Parliament through the Minister of Justice, announced that his office would conduct a review to establish whether the CSE conformed with the *Privacy Act*. Though the timing of this announcement appeared to be directly connected to the allegations made in *Spyworld*, an official spokesperson said that the review was merely part of a regular series of compliance audits conducted on government agencies. She also noted, however, that it was unlikely that the public would ever come to know much about the findings of the report because the Commissioner was constrained by the *Official Secrets Act*.<sup>61</sup> Responding to questions about why little information could be revealed about possible violations of privacy laws and whether or not the CSE had spied on Quebec separatists, the new Liberal Defence Minister, David Collenette, continued the practice of asking the public to indulge in paternalistic blind trusts when he said, "Quite frankly, I think Canadians are just going to have to trust the Prime Minister and the government that any fears they may have . . . are totally unfounded."<sup>62</sup>

Within a month, Derek Lee, now the new Liberal chair of the Sub -committee on National Security, reintroduced his motion to have SIRC review and monitor the CSE by amending the *CSIS Act* . The general purpose of the motion to place Canada's most secret intelligence organization, the CSE, under some form of independent oversight was broadly supported. Nevertheless, it soon became evident that the motion would only receive all-party support if it were modified. For its part, the Bloc wanted the Chief of the CSE to table an annual report in Parliament similar to the one provided by the Director of CSIS. Similarly, because SIRC lacked credibility in the eyes of Reform's members, that party wanted some other body to act as the external review body over the CSE's operations.<sup>63</sup> Once adopted, the minister agreed that the government would act on the motion. Apparently, it was now logical for Canadians to receive some more substantive assurance that the CSE operated within the law.<sup>64</sup>

Even while the minister was privately soliciting the views of interested non-governmental organizations on how this should be done, another revelation came to light that would further pressure the government to act. On this occasion, Jane Shorten, a former senior intelligence analyst with the CSE who had been let go in 1994 because of lack of work, risked prosecution under the *Official Secrets Act* and revealed to the media (just as the prime minister was meeting with members of the Asia Pacific Economic Group in New Zealand) that the CSE had been eavesdropping on the governments of such friendly states as Japan, Korea and Mexico. Unlike McInnis, Shorten had taken appropriate action before whistleblowing to the media. Apparently, she had approached the chair of the Sub-committee about her concerns and had expressed a willingness to appear before it.<sup>65</sup> Given that other CSE employees had expressed similar concerns,<sup>66</sup> and there are major privacy concerns at issue, it is more than a little surprising that the Sub-committee did not take up this offer and investigate the matter, particularly since government ministers and officials had recently claimed that countries like Canada did not spy on friendly states.<sup>67</sup>

One possible explanation is that while this generated significant attention abroad as demonstrated by journalistic inquiries and diplomatic notes there was little public disquiet at home. True, the CTV made much of their scoop and would claim that they were instrumental in moving the government's planning to introduce accountability mechanisms for the CSE ahead. But there was no apparent objection from the Canadian public about the impropriety of the matter. Arguably, this suggests that Canadians are more urbane than former Canadian intelligence officials have led us to believe and turns on its head their view that Canadians would not stand for the establishment of a foreign intelligence service.

## CONCLUSIONS

A full evaluation of the Sub-committee participation in the McInnis -Bristow affair cannot be reached without the SCNS tabling a report in Parliament and the House of Commons debating the issues raised. Nevertheless, certain conclusions can be made about the future of intelligence oversight in Canada, from the events that have already transpired.

First, the current system of oversight does not work well. SIRC cannot and does not speak *directly* to Parliament regarding either CSIS or on intelligence matters more broadly. It simply does not have the mandate. As a result, a lack of trust has developed in the institution's ability to review and monitor the agency in its charge. Clearly this view is now shared widely among MP's of all parties, many in the media, and among the public at large. Trust is the crucial issue on which the success of institutions like SIRC rests. That SIRC is now demonstrating that it is a competent researcher should be a *sine qua non*, not a rationalization for its future existence. Without a broad level of trust, there will be calls for its abolition, which in the end may prove insurmountable.

Second, the way in which members of SIRC have been appointed in the past has been the most significant factor in affecting the level of trust that Parliament, the media and the public have in that institution's capacity to operate in a non-partisan and thorough manner. The present government is to be commended for moving away from partisan appointments and looking for intelligence expertise. But as the old adage goes, one swallow does not make a summer. The entire committee should be drawn from individuals who have credentials in which the broadest spectrum of the public can trust. While it may come as a surprise to many, credentials demonstrating the pursuit of the public interest, not partisan ones, are not hard to find.

Third, there may be pressure to introduce some form of oversight mechanism governing the CSE that neither includes a statutory framework nor has effective independent oversight. Such a model should be discarded, as it will not fly over the longer term. It will not achieve the quintessential ingredient; it will only engender the public's cynicism, not its trust.

Fourth, it is important to note that oversight serves two masters. On the one hand, it is there to ensure that intelligence agencies operate within the bounds of propriety and with

appropriate levels of efficacy. On the other hand, oversight must also be there to protect the intelligence agencies *and independent oversight bodies* from false accusations. Such accusations can be equally damaging to the effectiveness of intelligence institutions because of the impact they have on the public trust and internally on the organizational culture, particularly regarding such important dimensions as morale and team spirit. The incapacity of SIRC to speak freely over the McInnis-Bristow affair has clearly had a significant negative impact on the members of CSIS as an article by former CSIS employee Peter Marwitz reveals.<sup>68</sup> It is critically important, as the Special Committee observed from its visit to Washington, to have knowledgeable people in politics who understand the intelligence community structure, how it operates, and its resource needs.

Fifth, while governments have routinely posited that SIRC is a surrogate for Parliament, no one has suggested, as David Harris has wrongly implied, that SIRC could be replaced by a parliamentary committee. The suggestion that an independent body like SIRC could be replaced by a parliamentary body is blatantly absurd. To understand why, one needs to face up to the reality of Parliament. Parliament is, by its very nature, a partisan body. It is inevitable that what takes place on the floor of the House will be partisan in nature. While this does not mean all committee work necessarily will be partisan, it does imply that the possibility always exists that even such crucial public interest activities, such as the oversight of intelligence, could erupt into partisanship at any moment, regardless of any strictures placed on it. Furthermore, parliamentary committees have structural reasons why they cannot provide on-going oversight, why they chose certain topics to consider and not others, and why they sometimes prefer to put out fires rather perform systematic reviews. Members frequently have other duties and demands on their time to perform that make it impossible for the committee to meet on a regular basis. Committees do not function continuously. When Parliament is between sessions (i.e., while prorogued) they may not function at all and when between sittings they require special authority. They do not have sufficient research staff. The staff that they do have does not have any first-hand experience with intelligence. Furthermore, Parliament has so far refused to have any of its staff security cleared. And in SIRC's case, its members perform a quasi-judicial function in hearing complaints, a role that parliamentarians should not be asked to perform.

Sixth, the oversight model, first proposed by the McDonald Commission and subsequently further developed by the Special Committee that reviewed the *CSIS Act*, of having an independent body report directly to a *special type* of parliamentary committee deserves closer and renewed attention. The model has particular advantages. It would permit Parliament to do what many argue is its primary function. Not only could it provide budget oversight and cover those matters that are outside the remit of the independent oversight bodies, but by establishing whether office holders are operating within and according to their statutory mandates, it could fulfil its true watchdog role. Furthermore, it is the only institution that could adequately intertwine two independent bodies like SIRC and the IG where there is no overlapping mandate, as was the case with the McInnis-Bristow affair. In fact, it appears that if the government does not legislate the model into being, Parliament may just continue to operationalize it, piece by piece, in an ad hoc manner.



This, of course, has advantages and disadvantages. On the one hand, it could permit the government to achieve what may be its objective without having a full debate on intelligence or by amending legislation. On the other hand, progress depends on a Sub-committee on National Security that is prepared to be activist in pursuing the public and Parliament's interests, to ensure that all key witnesses are interviewed in an *in camera* environment where they may feel able to reveal information privately, a chair that has the government's trust, and a willingness among committee members to work together on certain issues in a non-partisan manner. As we have seen, these factors are not always present.

## Endnotes

1. An earlier version of this paper was presented at the Annual Meeting of the British Political Studies Association at York in April 1985. The author wishes to thank several people at that meeting for their helpful comments. In Canada, CSIS' Communications Staff forwarded copies of letters the Service had written to the media and certain crucial media transcripts. Philip Rosen of the Library of Parliament's Research Branch drew on his extensive experience to provide me with invaluable insights. Maurice Archdeacon, SIRC's Executive Director, was kind enough to critique an earlier draft that saved me from numerous errors; so too did the Journal's anonymous reviewers. Any errors of fact and interpretation that remain, however, are entirely the fault of the author.
2. For a discussion of the role of scandals, see Andrei S. Markovits and Mark Silverstein, eds., *Politics of Scandal: Power and Process in Liberal Democracies* (New York: Holmes and Meier, 1988), especially Reg Whitaker's, "The RCMP Scandals," pp. 38-61.
3. For an analysis of Parliament's difficulties, see Stuart Farson, "The Noble Lie Revisited: Parliament's Five-Year Review of the CSIS Act: Instrument of Change or Weak Link in the Chain of Accountability," in Philip C. Stenning, ed., *Accountability for Criminal Justice: Selected Essays* (Toronto: University of Toronto Press, 1995), pp. 185-212.
4. I am especially indebted to Derek Lee MP, Chair of the Sub-Committee on National Security of the House of Commons, for discussing these issues with me and for sharing his speaking notes and briefing papers related to many of the subjects discussed below.
5. On 10 October 1991, the Standing Joint Committee for the Scrutiny of Regulations disallowed a piece of delegated legislation (Agricultural Exhibition Loans Order) *for the first time*. On 19 November 1992, it turned down two more, one dealing with Indian Health Regulations, the other prohibiting demonstrations near the entrances to Parliament.
6. In its June 1993 Report, the Standing Joint Committee for the Scrutiny of Regulations rebuked the government for issuing an Order that purported to exempt the Kemano II



hydro-electric project in British Columbia from the Environmental Assessment Review Process.

7. Despite written reminders, the Minister of Finance failed to table (as required by law) orders governing the implementation of the Canada-US Free Trade Agreement. Following a question of privilege, the Speaker ruled that non-compliance constituted a *prima facie* contempt of the House.

8. With some justification the two affairs have been seen as separate and distinct entities. SIRC, for example, did not have the authority to go into minister's offices to examine the actions of Brian McInnis. Similarly, the Inspector General was not asked to examine matters related to Grant Bristow. The parliamentary sub-committee worked on two reports one dealing with administrative security policy, the other concerning the Grant Bristow affair. Not all parliamentarians have seen them as separate entities. Jack Ramsey, for example, clearly saw them as related matters and referred to them as the "Brian McInnis-Grant Bristow Affair." See Canada, House of Commons, *Debates*, 29 September 1994, 6325-26. For him the underlying issue was

whether "CSIS and other institutions were politicized by the Brian Mulroney government and whether the McInnis-Bristow incident was the premeditated extension of that politicization." This article also sees the affairs as being all of a piece and refers to them collectively as "the McInnis-Bristow affair."

9. C.E.S. Franks, *Parliament and Security Matters* (Ottawa: Ministry of Supply and Services Canada, 1980), p. 21.

10. Ibid.

11. Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law*, Second Report, vol. 2, (Ottawa: Ministry of Supply and Service, August, 1981), pp. 883-91.

12. Ibid, pp. 896-902.

13. Bill C-9, *Canadian Security Intelligence Service Act*, 2nd Session, 32nd Parliament, 3233 Elizabeth II, 1983-84, section 69.

14. For a discussion of CSIS's failure to civilianize itself and the work of the IAT, see Stuart Farson, "Old Wine, New Bottles and Fancy Labels: The Rediscovery of Organizational Culture in the Control of Intelligence," in Gregg Barrak, ed., *Crimes by the Capitalist State: An Introduction to State Criminality* (Albany, NY: State University of New York Press, 1991), pp. 185-217.

15. See Canada, House of Commons, Special Committee on the Review of the CSIS Act and the Security Offences Act, *In Flux but not in Crisis* (Ottawa: Queen's Printer, September, 1990), p. 91.

16. Security Intelligence Review Committee, *Annual Report: 1988-1989* (Ottawa: Ministry of Supply and Services Canada, 1989). Chapter 2 contained a section on the ministerial directions SIRC had reviewed in the past year. It stated that "[w]ith one reservation . . . nothing we saw permits any unreasonable or unnecessary use of the Service's powers or unduly impinges on individual rights."

17. Ibid, recommendations 49 and 52.

18. I have discussed the Special Committee's investigation into SIRC's report on CSIS's "Report on the Innu Interview and the Native Extremism Investigation" in "The Noble Lie Revisited," pp. 185-212. The Special Committee's principal problem with the research was that SIRC only analysed CSIS documents and interviewed staff at headquarters, not personnel in the region or the members of the local community or the Innu who had been on the receiving end. Subsequent reports, most particularly that covering the Heritage Front, suggest that this deficiency has been corrected.

19. While having different ministers responsible for Canada's two principal intelligence agencies can be used to thwart parliamentary committees from digging too deeply into related matters or functions that run across government, having senior bureaucrats testify before separate committees is not without its problems. Consider the testimony of Margaret Bloodworth and Stewart Woolner before the Defence Committee in which the two revealed the budget of the CSE for the first time. See Canada, House of Commons, Standing Committee on National Defence and Veterans Affairs, 2 May 1995. They declined to answer questions that would have identified the proportion of the budget allotted to INFOSEC versus SIGINT, not realizing that the proportion allotted to INFOSEC had previously been identified as being between 20-22 percent in testimony by another official before the Standing Committee on Public Accounts. See Canada, House of Commons, Standing Committee on Public Accounts, *Minutes of Evidence*, 10 October 1991, 7: 12-16.

20. Canada, Solicitor General of Canada, *On Course: National Security for the 1990s* (Ottawa: Ministry of Supply and Services Canada, February 1991).

21. Most observers subscribe to the view that less than a handful of the Special Committee's 117 recommendations were acted upon. However, the Deputy Solicitor General, who ostensibly had responsibility for responding to the Committee's report, told a SIRC Conference in Montreal in September 1992 that the vast majority were encompassed by policy initiatives.

22. Canada, House of Commons, Standing Committee on Privileges and Election, *First Report*, 29 May 1991.

23. For another interpretation of the Bristow affair, see Reg Whitaker, "The 'Bristow Affair': a Crisis of Accountability in Canadian Security Intelligence," *Intelligence and National Security* (forthcoming).

24. Kirk Makin, "Tory Aide admits leaking CSIS memo," *The Globe and Mail*, 26 August 1994, p. A1.
25. See Rosemary Speirs, "Spy watchdog fears for image," *Toronto Star*, 7 September 1994, pp. A1, A9.
26. CBC, Prime Time News, "Information Leak on CSIS," 7 September 1994, 22:00 to 23:00 ET.
27. For a description of how Canada now clears government personnel and maintains security over its assets, see Stuart Farson, "Propriety, Efficacy and Balance: A Preliminary Appraisal of Canada's 'New', 'Improved' Administrative Security program," in Peter Hanks and John D. McCamus, eds., *National Security: Surveillance and Accountability in a Democratic Society* (Cowansville, PQ: Yvon Blais, 1989), pp. 127-55. For a historical treatment, see Reg Whitaker, "Origins of the Canadian Government's Internal Security System, 1946-1952," *Canadian Historical Review*, 65, no. 2 (June 1984), pp. 154-83.
28. CSIS, in fact, issued several news releases during the critical period. On 19 August 1994, it denied spying on the CBC. On 23 August it denied investigating political parties, and on 8 September it responded to CBC's accusation that it spied on postal workers. "CSIS has not and is not investigating the Canadian Union of Postal Workers (CUPW). CSIS has not provided information to the management of Canada Post on the activities of some CUPW members during contract negotiations."
29. Stephen Bindman, "CBC accused of relying on fake papers," *Vancouver Sun*, 10 September 1994, p. A8.
30. Chris Cobb, "CBC reluctant to let facts get in the way of a good story," *Ottawa Citizen*, 26 September 1994, p. A9.
31. According to a personal communication from SIRC to the author, SIRC also wrote to the Chairman of the CBC challenging the CBC's interpretation of events and asked for the other evidence that it supposedly had. In SIRC's words, "[t]he response we received said clearly that the CBC did not have in its possession any 'other documents'."
32. Jeff Sallot, "Inquiry into Bristow Case lacks only one thing: Bristow," *The Globe and Mail*, 15 September 1994, p. A6.
33. David Harris, "Much to lose in CSIS probe," *The Ottawa Citizen*, 12 September 1994, p. A9.
34. The groups included the Toronto Committee on Community and Race Relations, the B'nai B'rith Canada, the Canadian Union of Postal Workers, and the Canadian Civil Liberties Union. See Kirk Makin, "Is Canada's spy agency out of control?"; Rudy Platiel, "Royal Commission needed, groups say"; and Jeff Sallot, "CBC accused of Making

mistake in saying agency spied on CUPW." All are in *The Globe and Mail* , 10 September 1994, pp. A1, A5.

35. I have discussed the problem of SIRC's credibility in "Accountable and Prepared: Reorganizing Canada's Intelligence Community for the 21st Century," *Canadian Foreign Policy*, 1, no. 3 (Fall 1993), pp. 64-65. See also Reg Whitaker, "The Bristow Affair," and his "Politics of Security Intelligence Policy-Making in Canada: II 1984-1991," *Intelligence and National Security*, 7, no. 2 (April 1992), pp. 53-76. For a contrast with the earlier period, see Lawrence Lustgarten and Ian Leigh, *In from the Cold: National Security and Parliamentary Democracy* (Oxford, UK: Oxford University Press, 1994), especially pp. 458-66; and Peter Gill, "Symbolic or Real? The Impact of the Canadian Security Intelligence Review Committee, 1984-88," *Intelligence and National Security*, 4, no. 3 (July 1989), pp. 550-75; and his more recent, *Policing Politics: Security Intelligence and the Liberal Democratic State* (London: Cass, 1994), especially pp. 274-305. For SIRC's own view, see Michel Robert's comments in Canada, House of Commons, Sub-committee on National Security of the Standing Committee on Justice and the Solicitor

General, *Minutes of Evidence and Proceedings* , 16 December 1994, 5:11. It should be noted that the current government has moved away from clearly partisan appointments by reappointing Paule Gautier to replace Michael Robert after his appointment to the bench. Looked at in Reform Party terms, the government now also has no member on SIRC. The view of the Bloc Québécois is similar. See the views of Francois Langlois in Canada, House of Commons, Sub -committee on National Security of the Standing Committee on Justice and the Solicitor General, *Minutes of Evidence and Proceedings*, 16 December 1994, 5:10-11.

36. Stevie Cameron, *On the Take: Crime, Corruption and Greed in the Mulroney Years* (Toronto: Macfarlane Walter and Ross, 1994).

37. It should be noted that Solicitor General Douglas Lewis was also the chair of the PC's Ontario campaign. See Sheldon Alberts, "Probe sought into spying allegations," *Calgary Herald*, 24 August 1994, p. A3; Kate Mallow and Mike Scandiffio, "Reform Party suspects Doug Lewis of Spy Campaign," *The Hill Times*, 25 August 1994, pp. 1 and 9.

38. Canada, Security Intelligence Review Committee, *The Heritage Front Affair* (Ottawa: SIRC, 9 December 1994).

39. For the views of SIRC's Executive Director, Maurice Archdeacon, on the difficulties of proving a negative i.e., that there was no conspiracy see his forthcoming article "The Heritage Front Affair," *Intelligence and National Security* (forthcoming, 1996). This suggests that the onus should be on those who allege directly or indirectly such an assertion to provide some form of evidence to that effect.

40. True, SIRC's condemnation of *The 5th Estate* was more blunt. However, that directed at *Prime Time News* was much more lenient. According to Chris Cobb, "CBC program

apology saved it from wrath of spy committee," *Vancouver Sun*, 16 December 1994, p. A4 this was due to the apology provided by the CBC on *The National*, 2 December 1994.

41. Apparently, SIRC did comment on this matter to the Sub-committee. Private communication with the author.

42. Canada, House of Commons, Standing Committee on Justice and Legal Affairs, *First Report of the Sub-Committee on National Security on Document and Personnel Security*, 4 October 1995.

43. See the letter of Marcel Masse, President of the Treasury Board, and enclosures dated 28 February 1996.

44. Kate Malloy, "CSIS committee threatens to subpoena witnesses," *The Hill Times*, 20 October 1994.

45. The Minister of Justice, Allan Rock, *finally* announced his decision not to charge McInnis under the *Official Secrets Act* almost a full year after RCMP investigations began on grounds that it was not in the public interest to do so. See Anon, "Rock drops case against Tory aide," *The Globe and Mail*, 20 July 1994, p. A4. It is not known whether "police investigations" were used in this case as a means of discouraging the SCNS from investigating or whether there were *bona fide* reasons for not proceeding with a prosecution. It has been reported that McInnis had recently been diagnosed with leukemia. See Robert Fife, "Spying on posties denied," *The Ottawa Sun*, 9 September 1994. Also, Ron Atkey, SIRC's former chair and constitutional expert, had opined that while McInnis was more vulnerable to charges relating to the *CSIS Act*, breach of trust and theft, the search and seizure provisions of the *Official Secrets Act* under which McInnis's house had been searched were open to constitutional challenge. See Kirk Makin and Jeff Sallot, "Atkey doubts value of RCMP raid on McInnis home," *The Globe and Mail*, 9 September 1994, p. A7.

46. His remarks were voiced on CBC's *Prime Time News*. See Rosemary Speirs, "Spy watchdog fears for image," *Toronto Star*, 7 September 1994, p. A1.

47. Confidential communication with the author.

48. Significantly, the terms of reference of the Sub-committee include "the operations of SIRC on behalf of Parliament." See Canada, Sub-Committee on National Security of the Standing

Committee on Justice and Legal Affairs, *Minutes of Proceedings and Evidence*, Tuesday, 7 June 1994, 1:3.

49. Various confidential interviews.

50. See Canada, House of Commons, Board of Internal Economy, Press Release, 22 March 1995. Transediting is a process of limited editing. It eliminates such things as overlaps in tapes, repetitions and verification of quotes.
51. Interview with Reform MP, Val Meridith, on *As it Happens*, CBC, 28 March 1996.
52. Canada, House of Commons, Special Committee on the Review of the CSIS Act and the Security Offences Act, *In Flux but not in Crisis* (Ottawa: Queen's Printer, 1990), pp. 152-53.
53. Canada, Solicitor General of Canada, *On Course: National Security for the 1990s* (Ottawa: Ministry of Supply and Services, 1991), pp. 54-55.
54. Canada, House of Commons, *Debates*, 20 May 1992, 10976-86.
55. Philip Rosen, "Communications Security Establishment Background Paper and Work plan," (Ottawa: Research Branch, Library of Parliament, 1992).
56. John Starnes, "Cryptographic unit would be more accountable under CSIS," *Ottawa Citizen*, 17 July 1991.
57. Jean-Jacques Blais, "Committee should be expanded to review other agencies," *Ottawa Citizen*, 2 July 1992.
58. Canada, House of Commons, Sub-Committee on National Security of the Standing Committee on Justice and the Solicitor General, *Minutes of Proceedings and Evidence*, 15 June 1993, 11:8.
59. Mike Frost and Michel Gratton, *Spyworld: Inside the Canadian and American Intelligence Establishments* (Toronto: Doubleday, 1994), pp. 240-42. A similar assertion had earlier been made by Jean-Francois Lisee, *In the Eye of the Eagle* (Toronto: HarperCollins, 1990), p. 88.
60. Canadian Press, "Copps denies book's spying allegations," *The Globe and Mail*, 21 October 1994, p. A5.
61. Anon, "Privacy official reviewing spy agency," *The Globe and Mail*, 26 October 1994, p. A4.
62. Ibid.
63. Motion M-38 discussed in Canada, House of Commons, *Debates*, 15 November 1994, 13 December 1994, 21 March 1995.
64. Jim Bronskill, "Watchdog in works to monitor spy agency," *Vancouver Sun*, 23 March 1995, p. A7.

65. *CTV News*, 13 November 1995.

66. Confidential Interview, 1 December 1995.

67. Earlier in the year, in response to allegations that the CIA had spied on the Japanese delegation to the auto trade talks in Geneva, Solicitor General Herb Gray had claimed that countries like Canada did not do such things. See Anon, "Canada spies on allies, former agent claims," *Ottawa Citizen*, 13 November 1995, p. A5. Interestingly, when senior officials had appeared before the Standing Committee on National Defence and Veterans' Affairs, they had been more limited in their denial. Margaret Bloodworth, Deputy Clerk Intelligence and Security, limited such non -spying arrangements only to those countries that were party to the UKUSA SIGINT agreements (i.e., United States, United Kingdom, Australia, New Zealand and Canada). See Canada, Standing Committee on National Defence and Veterans' Affairs, *Minutes of Evidence*, 2 May 1995. Equally interesting was the fact that Prime Minister Chretien avoided making any such denial when confronted by reporters in New Zealand where members of the Asia Pacific Economic Group were meeting. See Shawn Durkan "Chretien mum on CSE spying," *Ottawa Sun*, 14 November 1995, p. 14.

68. See Peter Marwitz, "Do Canadians have reason to be worried about CSIS," *The Globe and Mail*, 10 October 1994, p. A17.