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**Canadian Human  
Rights Commission**

**Commission canadienne  
des droits de la personne**

**Human Rights Issues in National  
Security:  
An Inventory of Agency Considerations  
June 2008**

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de la sécurité nationale : Inventaire des considérations des organismes*

## **Executive Summary**

Since September 11, 2001, the security-consciousness of governments and citizens has intensified and national security institutions have been given increased powers. Critics have highlighted the potential of rights-infringements in this climate of security awareness. The Canadian Human Rights Commission commissioned this research to examine the extent to which national security agencies and their monitoring entities are directed to consider human rights issues in fulfilling their obligations, have publicly stated that they have considered such issues, or have reported on human rights issues in their activities.

This report concludes that all of the national security agencies and their respective monitoring agencies examined (with the exception of the Auditor General) have recognized that there is an obligation to identify and protect human rights in the context of protecting national security. In particular, general pledges to respect human rights issues arise in the context of reports to Parliament. Human rights issues also arise in relation to questions that are posed on an *ad hoc* basis before parliamentary committees.

However, this recognition of the importance of taking human rights into account does not arise out of any obligations found in the enabling legislation or associated regulations of national security agencies or their monitors. Further, despite some general legislation that ensures that human rights must be respected by all federal organizations, there is no legislation that imposes an obligation on national security agencies or their monitors to report on human rights issues in the context of national security in practice.

Without a systematic, legislative obligation to take human rights issues into account and a corresponding systematic, legislative obligation to report on human rights issues, it cannot be said whether the human rights that are identified as being at risk are effectively protected within the context of national security.

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## Introduction

Since the events of September 11, 2001, the security awareness of governments and citizens around the world has increased. The Canadian Parliament granted security agencies a number of new powers through legislation and increased funding. This changed environment elicited concern. Upon an invitation to appear before a parliamentary committee prior to the passing of the *Anti-terrorism Act*, the CHRC noted that “there is ... the risk that in the application of the definition [of terrorism] certain groups will be targeted unfairly for the sole reason of their race, ethnic origin, or religion.”<sup>1</sup>

In 2006, the CHRC commissioned research by Wesley K. Wark. His report, *National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post-9/11 Environment*, examined the application and evolution of national security policy since September 11, 2001 and the key accountability and responsibility mechanisms for those policies.<sup>2</sup> The report recommended that the CHRC consider monitoring legislative changes in the mandate of national security agencies and develop a database of human rights concerns from the public reports issued by the review agencies responsible for national security and intelligence.

Stemming from these recommendations, this report examines the extent to which national security agencies and their monitors are directed by legislation to consider and report on human rights issues, as defined by the *Canadian Human Rights Act*. It also explores any statements that consider human rights made by these agencies in reports or parliamentary appearances.<sup>3</sup>

The research process was initiated by examining the legislation and regulations that generally apply to national security agencies. This legislation and associated regulations were examined for any reference to human rights, whether direct or indirect, including those portions that outline the agencies’ reporting mechanisms. Only those statutes that relate to national security were reviewed rather than those that assign general enforcement power. These findings are outlined in the first section of the report.

In the second section, each of the agencies is reviewed in turn. Each review begins with the legislation and regulations that create or recognize national security agencies or their monitors. The legislation and regulations are reviewed for any general reference to human rights, whether direct or indirect including those portions that outline any reporting mechanisms.

The findings from the agencies’ public reports and parliamentary committee appearances are subsequently analyzed. All of the reports submitted to Parliament in the last 10 years by national security institutions were examined to determine their consideration and reporting of human rights issues. Appearances before some parliamentary committees by representatives of national security agencies over the last 10 years were reviewed for human rights issues. The

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<sup>1</sup> House of Commons, *Standing Committee on Justice and Human Rights Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 36 (30 October 2001) at 1140 (Michelle Falardeau-Ramsay, Chief Commissioner, Canadian Human Rights Commission).

<sup>2</sup> Wesley K. Wark “National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post-9/11 Environment, online: Canadian Human Rights Commission, < [http://www.chrc-ccdp.ca/research\\_program\\_recherche/NS\\_SN/toc\\_tdm-en.asp](http://www.chrc-ccdp.ca/research_program_recherche/NS_SN/toc_tdm-en.asp)>.

<sup>3</sup> Throughout this report, the term “national security agencies and their monitors” is used to collectively refer to the following organizations: the Royal Canadian Mounted Police, the Commission for Public Complaints Against the RCMP, the Canadian Security Intelligence Service, the Inspector General of the Canadian Security Intelligence Service, the Security Intelligence Review Committee, the Communications Security Establishment, the Commissioner of the Communications Security Establishment and the Auditor General.

committees reviewed were those responsible for national security and those that monitor national security agencies. While the committee names changed over time, they were predominantly responsible for justice, national defence, national security or specifically created to review the *Anti-terrorism Act*.

Furthermore, references to human rights considerations in the work of these organizations, solutions suggested, and strategies adopted to prevent or respond to such issues were examined.

## **I. General Legislation Applying to National Security Institutions**

This section examines the extent to which non-agency specific legislation directs national security institutions to consider or report on human rights. The applicable statutes are divided into two types: national security related legislation and legislation of general application.

### **a. National Security Legislation:**

There are a number of statutes that do not apply to any one specific national security agency. The following statutes and their corresponding regulations address national security, some in a general way and others in a more peripheral manner:

- *Emergencies Act*;
- *Anti-Terrorism Act*;
- *Immigration and Refugee Protection Act*;
- *Charities Registration (Security Information) Act*;
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
- *Security Offences Act*;
- *Canada Evidence Act*;
- *Criminal Code* sections amended by the *Anti-Terrorism Act*; and
- *Income Tax Act* sections amended by the *Anti-Terrorism Act*.

The extent to which each piece of legislation is applicable depends on the activity and the affected agency. Each statute grants powers, extends jurisdiction, enables programs and generates a series of obligations. Depending on the statute, it may govern all national security institutions or only some of them. Responsiveness to human rights considerations, including reporting obligations, also varies.

#### *Emergencies Act*

The *Emergencies Act*, under which no regulations exist, allows the Governor in Council to declare a national emergency where special powers are necessary to deal with the emergency.

The Act makes broad reference in its Preamble to the respect of rights under the *Charter*.<sup>4</sup> The Act's Preamble states:

AND WHEREAS the Governor in Council, in taking such special temporary measures,

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<sup>4</sup> *Emergencies Act*, R.S.C. 1985, c. 22 (4<sup>th</sup> Supp.).

would be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights and must have regard to the International Covenant on Civil and Political Rights, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.

The *Emergencies Act* does not create any reporting obligations on national security institutions. However, the *Act* requires that the exercise of powers under it be reviewed by a Parliamentary committee. It reads:

62. (1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose.

...

(6) The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to each House of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case,

(a) within three sitting days after a motion for revocation of the declaration is filed under subsection 59(1);

(b) within seven sitting days after a proclamation continuing the declaration is issued; and

(c) within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council.

As the *Emergencies Act* was not invoked during the last 10 years, there were no committee appearances by representatives of national security agencies under this section.

#### *Anti-terrorism Act.*

The *Anti-terrorism Act (ATA)* of 2001 is omnibus legislation that amended other statutes, and it is therefore considered a part of those statutes rather than a statute in its own right.<sup>5</sup> A portion of the legislation that is not an amendment to other legislation is the Preamble, which includes a general reference to the *Charter*:

WHEREAS the Parliament of Canada, recognizing that terrorism is a matter of national concern that affects the security of the nation, is committed to taking comprehensive measures to protect Canadians against terrorist activity, while continuing to respect and promote the values reflected in, and the rights and freedoms guaranteed by, the Canadian Charter of Rights and Freedoms...

The Preamble and the requirement that Parliament review the legislation again within three years are the only portions of the *ATA* that are not amendments to other legislation. They do not create any reporting obligations on national security institutions in respect of human rights issues.

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<sup>5</sup> *Anti-terrorism Act*, S.C. 2001, c. 41.

### *Immigration and Refugee Protection Act*

The *Immigration and Refugee Protection Act* (“*IRPA*”) includes sections that prohibit admission to Canada by individuals who may pose a threat to Canada’s national security.<sup>6</sup> The *IRPA* makes a general reference in its interpretive clause to human rights:

3.(3) This Act is to be construed and applied in a manner that ...

(d) ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;...

(f) complies with international human rights instruments to which Canada is signatory.

Neither the *IRPA* nor its regulations create a reporting obligation on national security agencies in respect of human rights issues.

### *Charities Registration (Security Information) Act*

The *Charities Registration (Security Information) Act* prevents charitable fundraising for terrorist organizations.<sup>7</sup> It makes no reference to human rights, but does require that decisions made pursuant to it be fair. The *Act* reads:

2.(2) This Act shall be carried out in recognition of, and in accordance with, the following principles: ... the process for relying on the information referred to in paragraph (a) in determining eligibility to become or remain a registered charity must be as fair and transparent as possible having regard to national security and the safety of persons.

The statute creates no reporting requirements.

### *Other National Security Statutes*

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Security Offences Act*, the *Canada Evidence Act*, the *Criminal Code*, and the *Income Tax Act* make no relevant reference to human rights or the *Charter* and create no relevant reporting obligations.

## **b. Legislation of General Application that Governs National Security Institutions:**

Financial accountability reporting and human rights legislation are two other types of statutes that govern the general operations of national security institutions.

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<sup>6</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>7</sup> *Charities Registration (Security Information) Act*, S.C.. 2001, c. 41, Part 6.



### *Financial Accountability Reporting*

The reporting obligations contained in the *Financial Administration Act (FAA)* were reviewed for any reference to human rights.<sup>8</sup> The *FAA* sets out the basis on which government spending may be approved, expenditures can be made, revenues obtained, and funds borrowed.

There are general reporting requirements imposed on departments and agencies identified in the schedules to the *FAA*. In particular, annual reports, which cover the most recently completed fiscal year, are tabled in Parliament by the President of the Treasury Board on behalf of the ministers who preside over the departments and agencies identified in Schedules I, I.1 and II of the *FAA*.

The schedules list the following agencies under review: the RCMP, CSIS, the CSE Commissioner, SIRC, the Complaints Commission, and the Auditor General. However, even though they are listed, CSIS and the CSE Commissioner do not report publicly on their finances pursuant to the *FAA*.<sup>9</sup> The CSE and the Inspector General of CSIS are not listed in the schedules.

The *FAA* reports are divided into Reports on Plans and Priorities and Departmental Performance Reports. Reports on Plans and Priorities are individual expenditure plans and Departmental Performance Reports are accounts of accomplishments achieved against planned performance expectations as set out in respective Reports on Plans and Priorities. Both Reports on Plans and Priorities and Departmental Performance Reports are tabled in Parliament.

Despite these general reporting obligations, there are no obligations contained in the *FAA* on national security institutions to report on human rights issues.

### *Human Rights Legislation*

Two statutory documents govern human rights in the activities of all federal government institutions: the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*.<sup>10</sup>

The rights contained in the *Charter* are constitutionally entrenched and all government bodies are required to respect these rights.

As the Supreme Court of Canada has recognized, the *CHRA* is quasi-constitutional legislation

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<sup>8</sup> *Financial Administration Act*, R.S.C. 1985, c. F-11.

<sup>9</sup> See Public Safety and Emergency Preparedness Canada, *2005-2006 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2006) at 5. This document states that CSIS does not report publicly because of national security. On March 19, 2007 the researchers were informed by Brian Pugin at the Treasury Board Secretariat that the CSE Commissioner and CSIS, though listed in the schedules to the *FAA*, do not prepare Departmental Performance Reports or Reports on Plans and Priorities.

<sup>10</sup> The *Canadian Multiculturalism Act*, S.C. 1985, c. 24 (4th Supp.) also dictates the consideration of sensitivity to ethnic diversity in the development of programs by federal government agencies, including national security agencies. See eg. s. 3(2)(c) which states that all federal institutions, including national security agencies, shall "promote policies, programs and practices that enhance the understanding of and respect for the diversity of the members of Canadian society".

and therefore is implicitly incorporated into all other federal legislation.<sup>11</sup>

Neither the *Charter* nor the *CHRA* create any direct obligations on federal institutions to report on human rights issues.

## **II. Human Rights Considerations by National Security Agencies and their Monitors**

### **1. Royal Canadian Mounted Police and its Monitoring Agency**

#### **a. Royal Canadian Mounted Police (RCMP)**

The RCMP is one of the three primary agencies responsible for the maintenance of national security in Canada. It is Canada's national policing agency and as the provincial police force everywhere in Canada except for Quebec and Ontario, is responsible for the criminal aspect of national security. This includes investigation, prevention and enforcement, and responsibility for enforcing a myriad of other federal and provincial legislation.<sup>12</sup>

#### *Enabling Legislation*

The RCMP exists pursuant to the *Royal Canadian Mounted Police Act* and its *Regulations*. Neither the *Act* nor the *Regulations* require any consideration of human rights, as defined by the *CHRA*, in the performance of the RCMP's duties.

The RCMP is not required by its own legislation to submit an annual report of any kind. The *Act* and *Regulations* create some general reporting obligations, but only for the Commission for Public Complaints Against the RCMP.<sup>13</sup>

#### *Reports to Parliament*

The RCMP's enabling legislation and its *Regulations* do not contain any obligation to report on human rights issues or to consider them in fulfillment of the RCMP's mandate. Unlike its enabling legislation, the *FAA* obligates the RCMP to produce annual reports. The Departmental Performance Report for 1999-2000, however, was not available for review.

None of the reports to Parliament include any reporting on human rights issues. However, 14 of the 19 reports contain statements to guide the RCMP on human rights issues.<sup>14</sup> The following

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<sup>11</sup> *Insurance Corp. of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145 at p. 157-158.

<sup>12</sup> See eg.: *Aeronautics Act*, R.S.C., 1985, c. A-2; *Air Travelers Security Charge Act*, S.C. 2002, c. 9, s. 5; *Animal Pedigree Act*, S.C. 1985, c. 8 (4th Supp.).

<sup>13</sup> The following are the reporting obligations under the *RCMP Act*: The Minister must lay before Parliament all agreements for the RCMP to provide provincial policing services (*Royal Canadian Mounted Police Act*, R.S., 1985, c. R-10 s. 20(5)); the RCMP External Review Committee, an independent body responsible for labour relations, must submit an annual report to the Minister (*Royal Canadian Mounted Police Act*, R.S., 1985, c. R-10 s. 25 & 30); and the responsible provincial minister must be informed of all complaints arising during the provision of provincial policing services (Commissioner's Standing Orders (Public Complaints), SOR/88-522). The complaints procedure is examined separately.

<sup>14</sup> Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2006* (Ottawa: Public Works and Government Services Canada, 2006); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2005* (Ottawa: Public Works and Government Services Canada, 2005); Royal

excerpt from the 2005-2006 Departmental Performance Report is a representative example of these statements:

I am confident that the Public Safety Portfolio will continue to fulfill its mandate of protecting Canadians from threats to their safety, while maintaining the rights and freedoms on which our open society depends.<sup>15</sup>

The report does not indicate whether such references relate to the human rights set out in the *CHRA*, or whether there are other kinds of rights that arise in the criminal context including the right to counsel, as provided by the *Charter*.

Three of the 19 reports mention strategies implemented by the RCMP to protect human rights, including the development of a Bias-free Policing Program and a National Security Community Outreach Program.<sup>16</sup> The 2004-2005 Departmental Performance Report reads as follows:

In keeping with the goal of safe homes and safe communities, the RCMP National priorities of Terrorism and Youth, and the RCMP's Bias-free Policing Program, the RCMP National Security Program is setting up a Community Outreach Program in the Integrated National Security Enforcement Teams (INSETs) and National Security Investigations Sections (NSIS), similar to the Community Advisory Committees at all RCMP detachments across Canada. This is an enhancement of existing National Security outreach work, as the RCMP has been working with Visible Minority communities pre- and post-9/11. To enhance this cooperation, the RCMP is now designing comprehensive community programs to engage diverse ethnic, cultural and religious communities across Canada to increase the understanding of mutual goals and concerns, elicit cooperation in making Canada secure from terrorist activity and to ensure appropriate and informed communications should a crisis arise.<sup>17</sup>

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Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2004* (Ottawa: Public Works and Government Services Canada, 2004); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2003* (Ottawa: Public Works and Government Services Canada, 2003); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2002* (Ottawa: Public Works and Government Services Canada, 2002); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2001* (Ottawa: Public Works and Government Services Canada, 2001); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 1999* (Ottawa: Public Works and Government Services Canada, 1999); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 1998* (Ottawa: Public Works and Government Services Canada, 1998); Royal Canadian Mounted Police, *Report on Plans and Priorities 2006-2007* (Ottawa: Public Works and Government Services Canada, 2006); Royal Canadian Mounted Police, *Report on Plans and Priorities 2005-2006* (Ottawa: Public Works and Government Services Canada, 2005); Royal Canadian Mounted Police, *Report on Plans and Priorities 2004-2005* (Ottawa: Public Works and Government Services Canada, 2004); Royal Canadian Mounted Police, *Report on Plans and Priorities 2002-2003* (Ottawa: Public Works and Government Services Canada, 2002); Royal Canadian Mounted Police, *Report on Plans and Priorities 2001-2002* (Ottawa: Public Works and Government Services Canada, 2001); Royal Canadian Mounted Police, *Report on Plans and Priorities 2000-2001* (Ottawa: Public Works and Government Services Canada, 2000); Royal Canadian Mounted Police, *Report on Plans and Priorities 1997-1998* (Ottawa: Public Works and Government Services Canada, 1997).

<sup>15</sup> Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2006* (Ottawa: Public Works and Government Services Canada, 2006) at 7.

<sup>16</sup> Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2006* (Ottawa: Public Works and Government Services Canada, 2006); Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2005* (Ottawa: Public Works and Government Services Canada, 2005); Royal Canadian Mounted Police, *Report on Plans and Priorities 2005-2006* (Ottawa: Public Works and Government Services Canada, 2005).

<sup>17</sup> Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2005* (Ottawa: Public Works and Government Services Canada, 2005) at p. 69.

The 2004-2005 Departmental Performance Report notes that the Commissioner consulted with the Cross-Cultural Roundtable on Security, an advisory group that provides the Minister of Public Safety with a better understanding of the inadvertent effects that national security measures could have on Canada's diverse communities.<sup>18</sup>

### *Committee Appearances*

In appearances before parliamentary committees, three human rights issues in relation to national security were raised: profiling, respect for diversity in police interactions and the definition of terrorism under the *Anti-terrorism Act*.

Committee members asked the RCMP officials about the use of profiling based on race, religion or nationality in identifying, investigating and arresting individuals. In response, Commissioner Zaccardelli stated the following:

Senator, on the point of racial profiling, we do not do racial profiling. We investigate criminal acts or acts that we believe are criminal in nature. We investigate those acts and try to prosecute those acts as best as we can. We do not consider the person's gender, colour or religion. We simply investigate criminal acts.

We do some profiling. It is not racial profiling. Obviously, in the domain of drugs, for example, we consider certain countries that produce drugs and so on. We consider certain people who might be involved in the drug trade or other contraband, so we try to do that type of profiling. We profile modes of transportation. We never do racial profiling. That is unacceptable in this country. I will never accept that as part of a policy of the RCMP.<sup>19</sup>

In a separate appearance, Commissioner Zaccardelli raised the issue of cultural sensitivity in response to a question on why some individuals may feel targeted because of their race:

We are working towards a policy of bias-free policing. That is a current, active initiative. You were in Saskatoon and I was in Regina last week. I had my national visible advisory committee with me. There is a Muslim on that committee, and we talked about these issues. We are actively talking about these issues. As you know, I met and spoke with the Muslim Canadian Congress in Toronto. Across the country we are actively talking about racial profiling. I agree with you. I have made it very plain. It is not for me whether I think there is racial profiling. If there is a perception in the minds of certain people, then I have to deal with that, and I have taken that approach. We are trying to be proactive, and I am open to any meeting, at any time, in any place to talk with anyone about these things. The question is how to deal with this, and we are trying. I appeared before the national council dealing with diversity. I will appear before the council again in Vancouver in the fall. We are actively talking about this.

We need to come to terms with racial profiling because it means many things to many people. We have done some research on this, and have found that there were some

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<sup>18</sup> Royal Canadian Mounted Police, *Departmental Performance Report for period ending March 31, 2005* (Ottawa: Public Works and Government Services Canada, 2005).

<sup>19</sup> Canada, *Special Senate Committee on Bill C-36 Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 2 (23 October 2001) (Giuliano Zaccardelli, Commissioner, Royal Canadian Mounted Police).

complaints about the RCMP. The question is whether it was racial profiling or did the person feel that they were treated in a way that did not respect their diversity. It is hard to actually define that....<sup>20</sup>

The only other reference to a human rights issue in the context of protecting national security arose as a question to the RCMP before a Parliamentary Committee about the definition of terrorism in the *ATA*, which limits the definition to actions motivated by a political, ideological or religious purpose.<sup>21</sup> When asking whether the religious reference in the definition was necessary and whether it might result in profiling, Senator Andreychuk illustrated the concern using the fear of associating with communists, or those believed to be communists, during the Cold War. She was concerned that individuals would similarly be fearful, or have their reputation tainted, because they had happened to attend an event or religious facility where individuals who did pose a threat also attended.<sup>22</sup>

### **b. Commission for Public Complaints Against the RCMP:**

The Commission for Public Complaints Against the RCMP (“Complaints Commission”), formerly known as the RCMP Public Complaints Commission, primarily oversees the activities of the RCMP. The Complaints Commission investigates and reviews complaints into the policing activities of the RCMP.

Any member of the public with a complaint relating to the conduct of an RCMP member in the performance of their duties under the *RCMP Act* or the *Witness Protection Program Act* may file a complaint with the Complaints Commission.<sup>23</sup> The Commission Chairman may also initiate a complaint where he is satisfied that there are reasonable grounds to investigate the conduct of a member.

The complaint is initially referred to the RCMP for investigation. Following a decision by the RCMP Commissioner not to investigate or a final report after an investigation has been completed, the Complainant may refer the complaint to the Complaints Commission for review. After reviewing the complaint and disposition, the Commission Chairman can then take one of several steps. He may prepare a report indicating satisfaction with the disposition of the complaint, request that the Commissioner investigate further, investigate further himself, institute a hearing into the complaint, or prepare a report with such findings as the Chairman sees fit.

The Complaints Commission, where dissatisfied with the RCMP’s handling of the complaint, produces a report of its findings and recommendations. After the Commissioner replies to the report, the final report is forwarded to the Minister, the parties involved and the Commissioner.

### *Enabling Legislation*

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<sup>20</sup> Canada, *Special Senate Committee on the Anti-terrorism Act Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 10 (9 May 2005) (Senator Jaffer and Giuliano Zaccardelli, Commissioner, Royal Canadian Mounted Police).

<sup>21</sup> *ATA*, now in *Criminal Code*, R.S.C., 1985, c. C-46, s. 83.01(1).

<sup>22</sup> Canada, *Special Senate Committee on the Anti-terrorism Act Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 10 (9 May 2005) (Senator Andreychuk).

<sup>23</sup> The *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, s. 45.35(1) also states that such complaints may be filed with any RCMP member, individual appointed or employed under the *Act*, or any provincial police complaints body in the province where the complaint arose.

The Complaints Commission exists pursuant to the *Royal Canadian Mounted Police Act* and its *Regulations*. The *Act* requires that the Complaints Commission submit to Parliament, through the Minister, an annual report on its activities. Neither the *Act* nor its *Regulations* specify what information should be included in these reports.

The *Act* and its *Regulations* also do not require the Complaints Commission to consider human rights. However, the Complaints Commission may handle human rights issues depending on the nature of a given complaint.

### *Reports to Parliament*

The Complaints Commission's enabling legislation and its *Regulations* contain no obligation to report or consider human rights issues. Under the *RCMP Act* the Complaints Commission has an obligation to produce annual reports on its activities and under the *FAA* it has an obligation to produce Reports on Plans and Priorities and Departmental Performance Reports. These reports are tabled before Parliament through the Minister.

The Complaints Commission's reports reflect similar human rights issues as those raised by the RCMP: general rights-based statements, reports on racial profiling complaints, and strategies for preventing or responding to human rights issues.

Seventeen of the 30 reports make statements about human rights issues that guide the Complaints Commission in its review of RCMP activities.<sup>24</sup> For example, in the 2006-2007 Report on Plans and Priorities, the Complaints Commission stated that the following was its strategic outcome for the upcoming year:

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<sup>24</sup> Commission for Public Complaints Against the RCMP, *2006-2007 Estimates: Report on Plans and Priorities* (Ottawa: Public Works and Government Services Canada, 2006); Commission for Public Complaints Against the RCMP, *2005-2006 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2006); Commission for Public Complaints Against the RCMP, *2005-2006 Estimates: Report on Plans and Priorities* (Ottawa: Public Works and Government Services Canada, 2005); Commission for Public Complaints Against the RCMP, *2004-2005 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2005); Commission for Public Complaints Against the RCMP, *2004-2005 Estimates: Report on Plans and Priorities* (Ottawa: Public Works and Government Services Canada, 2004); Commission for Public Complaints Against the RCMP, *2003-2004 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2004); Commission for Public Complaints Against the RCMP, *2003-2004 Estimates: Report on Plans and Priorities* (Ottawa: Public Works and Government Services Canada, 2003); Commission for Public Complaints Against the RCMP, *Annual Report 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006); Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005); Commission for Public Complaints Against the RCMP, *Performance Report for the period ending March 31, 2003* (Ottawa: Public Works and Government Services Canada, 2003); Commission for Public Complaints Against the RCMP, *Performance Report for the period ending March 31, 2002* (Ottawa: Public Works and Government Services Canada, 2002); RCMP Public Complaints Commission, *Annual Report 1998-1999* (Ottawa: Public Works and Government Services Canada, 1999); RCMP Public Complaints Commission, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998); RCMP Public Complaints Commission, *Performance Report for the period ending March 31, 1999* (Ottawa: Public Works and Government Services Canada, 1999); RCMP Public Complaints Commission, *Performance Report for the period ending March 31, 1998* (Ottawa: Public Works and Government Services Canada, 1998); RCMP Public Complaints Commission, *Performance Report for the period ending March 31, 1997* (Ottawa: Public Works and Government Services Canada, 1997).

Uphold safe communities by promoting Canadian values of respect for human and civil rights, multiculturalism and diversity, equality and fairness, and respect for the rule of law.<sup>25</sup>

Three of the Complaints Commission's reports referenced two human rights complaints filed against the RCMP. The 2004-2005 Annual Report states the following:

The CPC is currently reviewing a complaint whereby the RCMP assisted in the execution of 31 arrest warrants under the *Immigration Refugee Protection Act* and arrested a total of 23 individuals. The complainant alleged, among other things, that the RCMP improperly arrested the 23 Muslim men under suspicion of terrorist-type activities and failed to conduct a complete and thorough investigation into the matter.<sup>26</sup>

The 2002-2003 Annual Report notes a complaint by an individual who was improperly targeted because of her ethnicity:

A woman complained that the RCMP executed a search warrant at her residence in the middle of the night without justification. Although the complainant was later told that the search had been conducted in the context of suspected terrorism activities, she believes that her family was singled out because of their Arabic descent.<sup>27</sup>

No recommendations or conclusions flowing from these complaints are noted in any of the annual reports reviewed.<sup>28</sup>

Finally, the Commission's reports discuss strategies for preventing or responding to human rights issues. Two of the reports indicate that the Commission Chairman has met with the Cross-Cultural Roundtable on Security to learn more about the barriers preventing some groups from using the public complaints process.<sup>29</sup> The Complaints Commission also reported on its outreach activities in three reports.<sup>30</sup>

In seven of the Complaints Commission's reports, the Chairman comments on obstacles that the Commission experiences in fulfilling its oversight role. He recommends that there be greater

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<sup>25</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005) at p. 7.

<sup>26</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005).

<sup>27</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003); Commission for Public Complaints Against the RCMP, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2003); Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2004).

<sup>28</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2004); Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003).

<sup>29</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006) at p. 2 & 11; Commission for Public Complaints Against the RCMP, *2005-2006 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2006) at p. 2 & 11.

<sup>30</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003) at p. 9-10; Commission for Public Complaints Against the RCMP, *2004-2005 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2005) at p. 2; Commission for Public Complaints Against the RCMP, *2001-2002 Estimates: Report on Plans and Priorities* (Ottawa: Public Works and Government Services Canada, 2001) at p. 5 & 8.

clarity on the Commission's right to access all information deemed relevant.<sup>31</sup> This issue is outlined in greater detail below.

### *Committee Appearances*

In committee appearances, the three human rights issues discussed, as they relate to national security were: human rights generally, racial profiling and recommendations to allow the Complaints Commission to better monitor the RCMP's actions.

The Complaints Commission Chair made general reference in one appearance to the importance of protecting the rights of Canadians: "Given the extraordinary powers traditionally given to our police services and our national security services, it is vital to have effective oversight of their work in order to ensure that the civil liberties and human rights of all Canadians are preserved."<sup>32</sup>

As with the RCMP, the Complaints Commission representatives were also questioned on one occasion on complaints they had received on racial profiling. Commission Chair Shirley Heafey indicated that as of June 8, 2005 they had five racial-based complaints, all of which alleged that there were racial reasons for a search.<sup>33</sup> No more information on these complaints was provided before the committee.

In this same committee appearance, the Commission Chair made two recommendations on how to ensure the RCMP's compliance with the guidance provided by legislation and generally accepted policing practices. First, the Complaints Commission requested that the RCMP grant it more ready access to its documents:

I've been there for almost eight years, and it's a never-ending struggle to try to get the information in some cases. It's not 100%. There are some cases that are benign enough. The information comes in; it's not a big issue. But as soon as there is something controversial--and even when there isn't something controversial--we have to be relentless. We have to keep going back.

For me it's remarkable because of my experience with SIRC. I did the first investigations at SIRC. I was there when it was just set up. I simply went there and asked for the material and I got it. They didn't always like it but they gave it to me. They gave it all to

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<sup>31</sup> Commission for Public Complaints Against the RCMP, *2005-2006 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2005) at p. 11; Commission for Public Complaints Against the RCMP, *2003-2004 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2004) at p. 11 & 16; Commission for Public Complaints Against the RCMP, *Annual Report 2001-2002* (Ottawa: Public Works and Government Services Canada, 2002) at p. 11 & 24; Commission for Public Complaints Against the RCMP, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003) at p. 5-6 & 9; Commission for Public Complaints Against the RCMP, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2004) at p. 4 & 12; Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005) at p. 4; Commission for Public Complaints Against the RCMP, *Annual Report 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006) at p. 20-21.

<sup>32</sup> House of Commons, *Sub-Committee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 15 (June 8, 2005) (Shirley Heafey, Commission Chair, Commission for Public Complaints Against the RCMP).

<sup>33</sup> House of Commons, *Sub-Committee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 15 (June 8, 2005) (Shirley Heafey, Commission Chair, Commission for Public Complaints Against the RCMP).



me, and if I asked for more, I got more. I didn't have to make the kinds of efforts I'm making now, writing letters and calling people over and over, waiting sometimes a year, two years, three years to get information.<sup>34</sup>

This recommendation was reiterated in its 2005 Annual Report.<sup>35</sup>

The Commission Chair also recommended that the agency be granted audit powers like those of SIRC.<sup>36</sup> She argued that without such powers the Commission is limited in its ability to oversee the activities of the RCMP as complaints are rare in certain circumstances. For example, the Commission Chair indicated that she had been notified of a number of alleged instances of racial profiling, but individuals were unwilling to file formal complaints for fear of reprisal by the agency that they depended upon for policing:

Given the powers that we have, if we had an audit power we'd have a lot more work to do, but because of the kinds of people affected since September 11....

Two years ago I spoke at a mosque in London. There were about 600 people in the mosque, and I had an investigator with me, just in case somebody wanted information. I was swarmed at the end. Half the people were trying to get to me and telling me stories, and not one complaint came out of it. But they all had a problem; they all had something to complain about. Whether it was legitimate or not, I don't know, but they wouldn't complain...

We have had a little bit of an increase, but where there's been an increase is in the calls and the talking and the questioning. People ask, "If we complain, what are you going to do? How are you going to do it?" The legislation says if they complain I have to send it to the RCMP to investigate. They're not very happy about that. They have to be investigated by the exact people they're complaining against.

These recommendations are not specifically targeted at reviewing the RCMP's actions for human rights issues but are nonetheless relevant to such concerns.

## **2. Canadian Security Intelligence Service and its Monitoring Agencies:**

### **a. Canadian Security Intelligence Service (CSIS)**

CSIS is responsible for the collection and analysis of information on potential threats to national security. Where such information requires preventative action or an arrest, CSIS shares this information with the RCMP or other policing agencies. CSIS is also responsible for conducting security checks for individuals seeking employment or other contracts with the federal government or airports and for individuals seeking to immigrate to Canada.

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<sup>34</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005). The issue of access by the Complaints Commission to police informant records of the RCMP was decided by the courts in Canada (*Royal Canadian Mounted Police Public Complaints Commission v. Canada (Attorney General)*, [2005] F.C.J. No. 1101 at paras. 17, 18 & 48).

<sup>35</sup> Commission for Public Complaints Against the RCMP, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2004).

<sup>36</sup> The powers of SIRC are discussed later in this report.

## *Enabling Legislation*

CSIS exists pursuant to the *Canadian Security Intelligence Service Act* and its *Regulation*. Neither the *Act* nor the *Regulation* requires any consideration of human rights, as defined by the *CHRA*, in the performance of CSIS's duties.

CSIS is not required by its own legislation to submit a public annual report, but a report on its operational activities must be submitted to the Minister and the Inspector General.<sup>37</sup>

The report of the Special [parliamentary] Committee on the Review of the *Canadian Security Intelligence Service Act* and the *Security Offences Act* in 1990, entitled *In Flux but not in Crisis*, required that more information be made available to Parliament and the public on the mandate and function of CSIS.<sup>38</sup> In the government's response, entitled *On Course: National Security for the 1990's*, it undertook to table before Parliament an annual report from CSIS that would discuss the "threat environment".<sup>39</sup> Since that time such reports have been tabled annually, but no report has been tabled since 2005.

## *Reports to Parliament*

CSIS does not report publicly under its enabling legislation or the *Regulation*, but rather pursuant to the commitment of the government in 1991. In contrast to the other agencies, CSIS does not produce Reports on Plans and Priorities or Departmental Performance Reports under the *FAA*. Despite being listed as a federal agency in the schedules to the *FAA*, national security concerns prevent regular public reporting.<sup>40</sup>

None of the last 10 annual reports include any reporting on human rights issues; however, two human rights-related issues emerge. First, three of the reports contain statements that human rights issues must be respected and taken into account by CSIS.<sup>41</sup> For example:

Investigative action taken by the Service is commensurate with the perceived level of the threat. Action begins with the least intrusive measures appropriate to the situation. Further steps are taken as needed, each requiring higher levels of approvals. At all times, the Service is mindful of individual rights and civil liberties, balancing them against its responsibility to protect all Canadians and Canada's national security.<sup>42</sup>

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<sup>37</sup> *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, s. 33.

<sup>38</sup> House of Commons, Special Committee on the Review of the CSIS Act and the Security Offences Act, *In Flux but Not in Crisis: Report of the Special Committee on the Review of the CSIS Act and the Security Offences Act* (Ottawa: Queen's Printer, 1990).

<sup>39</sup> Canada, Solicitor General, *On Course: National Security for the 1990s, The Government's Response to the Report of the Special Committee on the Review of the CSIS Act and the Security Offences Act* (Ottawa: Minister of Supply and Services, 1991).

<sup>40</sup> Public Safety and Emergency Preparedness Canada, *2005-2006 Departmental Performance Report* (Ottawa: Public Works and Government Services Canada, 2006) at 5.

<sup>41</sup> Canadian Security Intelligence Service, *Public Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1997); Canadian Security Intelligence Service, *Public Report 2001-2002* (Ottawa: Public Works and Government Services Canada, 2002); Canadian Security Intelligence Service, *Public Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005).

<sup>42</sup> Canadian Security Intelligence Service, *Public Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005).

Second, one CSIS report contained statements on strategies implemented to ensure greater cultural awareness among staff and protection of human rights:

The Service also strives to ensure that staff are respectful of diversity and sensitive to all cultures. Employment equity presentations and cultural awareness sessions form part of the Orientation Course for new employees, the Intelligence Officer Entry Training course and other development courses.

In addition, intelligence officers receive ongoing training in cultural awareness and sensitization.<sup>43</sup>

### *Committee Appearances*

Representatives of CSIS also appear before Parliamentary Committee. In these discussions, three human rights issues were raised in relation to national security: general statements on the respect for individual rights, racial or religious profiling and strategies to protect human rights.

CSIS officials made general comments about respecting rights:

There's no question that one would like to have a system that works very effectively and efficiently, but of course that's a tradeoff to democratic rights and freedoms and so on. It's not for me, at the end of the day, to make a judgment about where the tradeoff should take place. Indeed, that's for you ladies and gentlemen to do more than I.<sup>44</sup>

Questions on racial, religious, ethnic or political profiling were also raised.<sup>45</sup> In response, CSIS stated that they did not do such profiling, as it would not be a useful tool to them in fulfilling their mandate. The following statement by Director Ward Elcock presents such an example:

The concern with racial profiling, as much as anything else, is action that is purely racially based, when it is solely an individual's skin colour or religion that arouses suspicion. The reality for us as an organization is that skin colour and religion do matter. You are looking at a range of factors. Someone may be of interest not only because of his or her religion or perhaps not even because of religion. A person may present himself or herself as a Christian by birth or as a convert but if that person went to a specific school at a specific point of time in a specific part of the world, that person may be of concern to us. Even Caucasians originally from Canada or the United States could be of concern. It is a range of information that causes people to be of concern to us; not their skin colour or religion specifically.<sup>46</sup>

Strategies for preventing human rights abuses or other improper uses of CSIS's power were also discussed. The following were specifically raised in committee appearances as aspects of

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<sup>43</sup> Canadian Security Intelligence Service, *Public Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005).

<sup>44</sup> House of Commons, *Sub-Committee on National Defence of the Standing Committee on Justice and Legal Affairs Evidence*, 35<sup>th</sup> Parl., 2<sup>nd</sup> sess., No. 7 (June 17, 1996) (Ward Elcock, Director, Canadian Security Intelligence Service).

<sup>45</sup> Some Committee members were concerned about whether CSIS targeted Quebec sovereigntists. See House of Commons, *Sub-Committee on National Defence of the Standing Committee on Justice and Legal Affairs Evidence*, 37<sup>th</sup> Parl., 3<sup>rd</sup> sess., No. 2 (May 6, 2004) (Yvan Loubier).

<sup>46</sup> Canada, Senate, *Standing Committee on National Security and Defence Evidence*, 37<sup>th</sup> Parl., 2<sup>nd</sup> sess., No. 10 (February 17, 2003) (Ward Elcock, Director, Canadian Security Intelligence Service).

CSIS's processes or strategies that exist to prevent abuse: CSIS's formal targeting regime,<sup>47</sup> diversity and cultural awareness training,<sup>48</sup> and the definition of national security in the *CSIS Act*.<sup>49</sup>

## **b. Inspector General of the Canadian Security Intelligence Service:**

The Inspector General of CSIS is responsible for reviewing the reports of CSIS to ensure their accuracy and clarity. The Inspector General also reviews CSIS activities and provides the Minister information on whether CSIS is in compliance with its statutory obligations and operational policies.

### *Enabling Legislation*

The Inspector General exists pursuant to the *Canadian Security Intelligence Service Act*. Its associated *Regulation* does not relate to the Inspector General.

CSIS provides a copy of the report both to the Inspector General and the Minister. The *Act* then requires the Inspector General to submit a certificate to the Minister. This certificate must state the extent to which he is satisfied with CSIS's report. The certificate must also state whether any of the operational activities during the period of the report were contrary to the *Act* or Ministerial direction, or involved an unreasonable exercise of CSIS's powers. This certificate and report are then provided to SIRC.

The Inspector General reports on legislative compliance but is not directed by legislation to report on human rights issues. The reports are not publicly available.

### *Reports to Parliament*

The Inspector General's Certificates are provided to the Minister and are not generally public documents. Nonetheless several of the past Certificates were obtained in a redacted form. The certificates issued after 2000 were available on the Inspector General's website; the 1997 Certificate was available on the Public Safety website. There are no Certificates for 1998 and 1999. The 1994-1996 Certificates were obtained through a freedom of information request.

Four of the Certificates referenced the rights of Canadians. Three of those references were specific to compliance with the *Charter's* privacy rights and warrant requirements.<sup>50</sup> The

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<sup>47</sup> Canada, Senate, *Standing Committee on National Security and Defence Evidence*, 39<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 2 (May 29, 2006) (Jack Hooper, Deputy Director, Canadian Security Intelligence Service).

<sup>48</sup> Canada, Senate, *Special Committee on the Anti-terrorism Act Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 3 (March 7, 2005) (Jim Judd, Director, Canadian Security Intelligence Service); Canada, Senate, *Special Committee on the Anti-terrorism Act Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 18 (October 31, 2005) (Jim Judd, Director, Canadian Security Intelligence Service).

<sup>49</sup> House of Commons, *Sub-Committee on National Defence of the Standing Committee on Justice and Legal Affairs Evidence*, 37<sup>th</sup> Parl., 3<sup>rd</sup> sess., No. 2 (May 6, 2004) (Ward Elcock, Director, Canadian Security Intelligence Service).

<sup>50</sup> Inspector General of the Canadian Security Intelligence Service, *Certificate of the Inspector General – 1996*, Public Safety and Emergency Preparedness Canada; Inspector General of the Canadian Security Intelligence Service, *Certificate of the Inspector General – 1995*, Public Safety and Emergency Preparedness Canada; Inspector General of the Canadian Security Intelligence Service, *Certificate of the Inspector General – 1994*, Public Safety and Emergency Preparedness Canada.

remaining reference is a general one: “An appropriate balance must always be sought between national security and public safety on the one hand, and the maintenance of the rights and liberties of Canadians on the other.”<sup>51</sup>

However, each of the Inspector General’s reports contains a general statement of her satisfaction that CSIS has complied with all statutory and ministerial direction during the applicable time period.

### *Committee Appearances*

There were no committee appearances by the Inspector General or her representatives in the last 10 years.

### **c. Security Intelligence Review Committee (SIRC):**

SIRC reviews CSIS’s activities through its power to audit all CSIS activities for their completeness, accuracy and legislative compliance and through complaints from members of the public. These audit reports are not publicly available.

Under the *CSIS Act*, SIRC may investigate a complaint against CSIS if the CSIS Director has not responded or if SIRC is dissatisfied with the response given.

SIRC can also investigate CSIS on matters referred to under the *CHRA*. Where a minister of the Crown states a complaint filed with the Canadian Human Rights Commission has national security implications, the Commission may dismiss the complaint or refer it to SIRC for investigation.<sup>52</sup>

Furthermore, SIRC investigates reports from the Minister of Citizenship and Immigration that an individual be denied citizenship because they constitute a threat to Canadian security. Under the *Citizenship Act*, SIRC must investigate the grounds stated in the report and report back to the Minister and the individual.

SIRC may also review CSIS’s reports, *Regulations*, reports on the use of warrants, Ministerial directions, and agreements with other agencies.

### *Enabling Legislation*

SIRC exists pursuant to the *Canadian Security Intelligence Act*, but the *Regulation* does not relate to it. The *CSIS Act* directs SIRC to submit an annual report on its activities, which the Minister then lays before Parliament. SIRC is also required to provide such special reports as requested by the Minister and must report to the Minister, Director of CSIS and the Complainant on its findings following any investigation. The statute does not require any of these reports to include information on human rights issues. However, reports following investigations based on

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<sup>51</sup> Inspector General of the Canadian Security Intelligence Service. *Certificate of the Inspector General – 2001*, Public Safety and Emergency Preparedness Canada, online: <<http://www.psepc-sppcc.gc.ca/abt/www/igcsis/igcsis-en.asp>>.

<sup>52</sup> Canadian Human Rights Act, R.S.C., 1985, c. H-6, s. 45.

complaints of discrimination under the *CHRA* will, by necessity, include a discussion of human rights issues.

The *CSIS Act* does not direct SIRC to consider human rights issues in fulfilling its mandate, other than in the investigation of complaints under the *CHRA*, where they must be considered.

### *Reports to Parliament*

SIRC reports pursuant to its enabling statute and the *FAA*. SIRC's last 10 annual reports and the last 10 Reports on Plans and Priorities and Departmental Performance Reports were reviewed. However, the 1999-2000 Report on Plans and Priorities was unavailable. This review uncovered general statements on rights-protection and allegations of racial or religious discrimination.

All 29 reports reviewed made reference to the collection of information while guarding individual's or citizen's rights. In its Departmental Performance Report from 2005-2006, SIRC states that its reason for existence is:

To provide assurance to the Parliament of Canada and through it, to Canadians, that CSIS is complying with law, policy and Ministerial Direction in the performance of its duties and functions. SIRC's mission is to protect Canadians' rights by ensuring that CSIS acts within the law.<sup>53</sup>

On occasion, CSIS shares information that it acquires with overseas governments. In each of its annual reports, SIRC commented on the importance of taking care not to share information with countries "with poor human rights records".<sup>54</sup>

A general statement in the 1997-1998 Annual Report specifically referenced the *CHRA*:

Operational policies [of CSIS], some of which are sensitive and potentially intrusive, must comply with Ministerial Direction, the *CSIS Act*, the *Canadian Human Rights Act*, and other relevant legislation.<sup>55</sup>

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<sup>53</sup> Security Intelligence Review Committee, *Departmental Performance Report for the period ending March 31, 2006* (Ottawa: Public Works and Government Services Canada, 2006) at p. 5.

<sup>54</sup> Security Intelligence Review Committee Annual Report, *Annual Report 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006); Security Intelligence Review Committee Annual Report, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005); Security Intelligence Review Committee Annual Report, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2004); Security Intelligence Review Committee Annual Report, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003); Security Intelligence Review Committee Annual Report, *Annual Report 2001-2002* (Ottawa: Public Works and Government Services Canada, 2002); Security Intelligence Review Committee Annual Report, *Annual Report 2000-2001* (Ottawa: Public Works and Government Services Canada, 2001); Security Intelligence Review Committee Annual Report, *Annual Report 1999-2000* (Ottawa: Public Works and Government Services Canada, 2000); Security Intelligence Review Committee Annual Report, *Annual Report 1998-1999* (Ottawa: Public Works and Government Services Canada, 1999); Security Intelligence Review Committee Annual Report, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998); Security Intelligence Review Committee Annual Report, *Annual Report 1996-1997* (Ottawa: Public Works and Government Services Canada, 1997).

<sup>55</sup> Security Intelligence Review Committee Annual Report, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998).

In the 2004 annual report, SIRC also maintained that it is satisfied that the security profiles used by CSIS did not target individuals based on ethnicity or religion.<sup>56</sup> SIRC received two complaints against CSIS based on racial and religious discrimination. The first complainant alleged loss of employment due to racial discrimination. The second complainant alleged to have been denied airport security clearance based on religion. In both cases SIRC found the allegations unsubstantiated.

Nine of the annual reports contained a statement that CSIS took care not to impede “lawful advocacy, protest, and dissent” or to negatively impact sensitive institutions such as religious organizations, the media, and political institutions in its investigations.<sup>57</sup>

### *Committee Appearances*

Discussion before parliamentary committees revealed general statements on the respect of individual rights and racial and religious profiling.

In three appearances, SIRC representatives made general statements on the need to “balance” individual rights when protecting national security,<sup>58</sup> for example:

In conclusion, as the chair of SIRC, I believe its work is more vital than ever and is a vital part of the framework established by Parliament to balance the need to protect both the state and the rights of the individual. Given the new world we suddenly find ourselves in, the need to maintain that essential balance is more important today than it has ever been. The committee as a whole will follow your work with great interest.<sup>59</sup>

When asked whether SIRC had received an increase in complaints since September 11, 2001 or whether they had received complaints of racial profiling, Tim Farr, Associate Executive Director, stated:

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<sup>56</sup> Security Intelligence Review Committee Annual Report, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2004).

<sup>57</sup> Security Intelligence Review Committee Annual Report, *Annual Report 2005-2006* (Ottawa: Public Works and Government Services Canada, 2006); Security Intelligence Review Committee Annual Report, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005); Security Intelligence Review Committee Annual Report, *Annual Report 2003-2004* (Ottawa: Public Works and Government Services Canada, 2004); Security Intelligence Review Committee Annual Report, *Annual Report 2002-2003* (Ottawa: Public Works and Government Services Canada, 2003); Security Intelligence Review Committee Annual Report, *Annual Report 2001-2002* (Ottawa: Public Works and Government Services Canada, 2002); Security Intelligence Review Committee Annual Report, *Annual Report 2000-2001* (Ottawa: Public Works and Government Services Canada, 2001); Security Intelligence Review Committee Annual Report, *Annual Report 1999-2000* (Ottawa: Public Works and Government Services Canada, 2000); Security Intelligence Review Committee Annual Report, *Annual Report 1998-1999* (Ottawa: Public Works and Government Services Canada, 1999); Security Intelligence Review Committee Annual Report, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998); Security Intelligence Review Committee, *Departmental Performance Report for the period ending March 31, 2003* (Ottawa: Public Works and Government Services Canada, 2003).

<sup>58</sup> House of Commons, *Standing Committee on Public Safety and National Security Evidence*, 39<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 18 (November 1, 2006) (Gary Filmon, Chair, Security Intelligence Review Committee); Canada, Senate, *Special Committee on Bill C-36 Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 2 (October 23, 2001) (Gary Filmon, Chair, Security Intelligence Review Committee); House of Commons, *Sub-Committee on National Security of the Standing Committee on Justice and Human Rights Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 2 (March 13, 2002) (Paule Gauthier, Chair, Security Intelligence Review Committee).

<sup>59</sup> Canada, Senate, *Special Committee on Bill C-36 Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 2 (October 23, 2001) (Paule Gauthier, Chair, Security Intelligence Review Committee).

No. There hasn't been a spike under section 41 of the act--that's what Marian was referring to, "any act or thing done by the Service"--in the number of complaints since 9/11. We haven't received a specific complaint related to racial profiling, nor have we, when we've conducted our reviews, come across any evidence that would suggest they're engaging in this practice. But there is a lot of anecdotal evidence that has been raised, and certainly we're aware of the allegations that have been made and reported in the media, and we take this pretty seriously.<sup>60</sup>

In two other appearances, a committee member asked questions about the targeting of Quebec sovereigntists during the period leading up to the Quebec referendum.<sup>61</sup>

### **3. Communications Security Establishment and its Monitoring Agency:**

#### **a. Communications Security Establishment (CSE)**

CSE collects electronic communications between two foreign individuals outside of Canada or one foreign individual outside of Canada, speaking with an individual within Canada, where the foreign individual is the target. CSE collects this information to advise the Canadian government on national security threats. It also advises the government on the protection of electronic government information.

#### *Enabling Legislation*

Until the passage of the *Anti-terrorism Act* in 2001, the CSE did not exist pursuant to legislation. Instead it had been created at the discretion of the Minister of National Defence.<sup>62</sup> The CSE currently exists pursuant to the *National Defence Act* and its *Regulations*. None of the *Regulations* relate to the CSE.

The *Act* creates no reporting obligations on the CSE and makes no mention of human rights in national security.

#### *Reports to Parliament and Committee Appearances*

There are no publicly available reports from the CSE.<sup>63</sup> However, a review of Hansard revealed one appearance by the head of the CSE before a parliamentary committee in the last 10 years that referenced human rights. In a March 2004 appearance, CSE made a general statement that it abides by the *Charter*.<sup>64</sup>

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<sup>60</sup> House of Commons, *Sub-Committee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 15 (June 8, 2005) (Tim Farr, Associate Executive Director, Communications Security Establishment).

<sup>61</sup> House of Commons, *Sub-Committee on National Security of the Standing Committee on Justice and Legal Affairs Evidence*, 35<sup>th</sup> Parl. 2<sup>nd</sup> sess., No. 4 & No. 10 (May 15, 1996 & December 3, 1996) (Langlois).

<sup>62</sup> *ATA*, now in *National Defence Act*, R.S.C. 1985, c. N-5, ss. 273.61-273.7

<sup>63</sup> As noted above, the CSE does not report pursuant to the *FAA*.

<sup>64</sup> House of Commons, *Standing Committee on National Defence and Veterans Affairs*, 37<sup>th</sup> Parl., 3<sup>rd</sup> sess., No. 6 (March 30, 2004) (Kevin Coulter, Chief, Communications Security Establishment).



## **b. Office of the Commissioner of the Communications Security Establishment:**

The CSE Commissioner monitors the activities of the CSE. He is responsible for auditing CSE activities for statutory compliance and reporting findings to the Minister. The CSE Commissioner also has jurisdiction to accept, investigate and respond to complaints about the CSE's activities.

### *Enabling Legislation*

Since 2001, the CSE Commissioner exists under the *National Defence Act*. None of the *Regulations* under the *Act* relate to the CSE Commissioner.

The CSE Commissioner is required to produce an annual report on his activities, which the Minister then lays before Parliament.<sup>65</sup> The *National Defence Act* provides no direction on the contents of such reports.

The *Act* does not direct the CSE Commissioner to consider human rights. However, the CSE Commissioner is responsible for reviewing CSE's legal compliance.

### *Reports to Parliament*

The CSE Commissioner reports pursuant to the *National Defence Act*. In, six of the last 10 reports reviewed, statements on the protection of rights were made.<sup>66</sup> For example:

I was able to observe that the policies require CSE employees to conduct their operational activities in strict recognition of, and adherence to, federal legislation governing the protection of the rights, privacy and freedoms of Canadians.<sup>67</sup>

Beyond these statements, none of the reports make reference to human rights issues.

### *Committee Appearances*

The CSE Commissioner also appears before parliamentary committees. In these appearances, the only human rights related statements were general statements on rights. For example, Commissioner Claude Bisson made the following statement during his appearance on October 22, 2001:

The drafters of this bill were required to take into account the critical balance between the needs of the state to collect information to protect its citizens, and the individual

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<sup>65</sup> *National Defence Act*, R.S.C. 1985, c. N-5, s. 273.63(3)

<sup>66</sup> Communications Security Establishment Commissioner, *Annual Report 2004-2005* (Ottawa: Public Works and Government Services Canada, 2005); Communications Security Establishment Commissioner, *Annual Report 2000-2001* (Ottawa: Public Works and Government Services Canada, 2001); Communications Security Establishment Commissioner, *Annual Report 1999-2000* (Ottawa: Public Works and Government Services Canada, 2000); Communications Security Establishment Commissioner, *Annual Report 1998-1999* (Ottawa: Public Works and Government Services Canada, 1999); Communications Security Establishment Commissioner, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998); Communications Security Establishment Commissioner, *Annual Report 1996-1997* (Ottawa: Public Works and Government Services Canada, 1997).

<sup>67</sup> Communications Security Establishment Commissioner, *Annual Report 1997-1998* (Ottawa: Public Works and Government Services Canada, 1998).

rights of those citizens to privacy and freedom. I know that one of the stated objectives of this committee is to explore the protection of human rights and civil liberties in the application of this proposed act, and I wish you well in your deliberations.<sup>68</sup>

#### 4. Auditor General:

The Auditor General audits the activities of all of the national security agencies and their monitors in relation to their use of financial resources. Unlike the other monitoring agencies, the Auditor General's oversight is limited to the use of financial resources and not to the organizations' general activities.<sup>69</sup>

##### *Enabling Legislation*

The Auditor General exists pursuant to the *Auditor General Act* and its one *Regulation*. The *Act* identifies the Auditor General as the auditor of the federal government's financial records. The Auditor General examines the financial statements required of the government as a whole under the *FAA*, and it reports on whether these financial statements are in accordance with generally accepted accounting practices ("GAAP Audit Report").

The *Act* also requires the Auditor General to submit at least one annual report to Parliament on its work as well as governmental and departmental compliance in conducting audits. These reports are to call attention to anything "of significance and of a nature that should be brought to the attention of the House of Commons", including money spent inefficiently or for purposes for which it was not designated ("Annual Reports").<sup>70</sup>

The *Act* does not direct the Auditor General to consider human rights or to report on human rights issues.

##### *Reports to Parliament and Committee Appearances*

The Annual Reports, Reports on Plans and Priorities and Departmental Performance Reports of the Auditor General were reviewed over the last 10 years, but not the GAAP Audit Reports. All appearances by representatives of the Auditor General's office before the parliamentary committees in the last 10 years were also reviewed. These reports and committee appearances were examined for references to human rights in the context of national security. None of them included any reference to human rights in national security.

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<sup>68</sup> Canada, Senate, *Special Committee on Bill C-36 Evidence*, 37<sup>th</sup> Parl., 1<sup>st</sup> sess., No. 1 (October 22, 2001) (Claude Bisson, Commissioner, Office of the Commissioner of the Communications Security Establishment); House of Commons, *Standing Committee on National Defence and Veterans Affairs Evidence*, 37<sup>th</sup> Parl., 3<sup>rd</sup> sess., No. 8 (April 20, 2004) (Antonio Lamer, Commissioner, Office of the Commissioner of the Communications Security Establishment); Canada, Senate, *Special Committee on the Anti-terrorism Act Evidence*, 38<sup>th</sup> Parl., 1<sup>st</sup> sess. No. 13 (June 13, 2005) (Antonio Lamer, Commissioner, Office of the Commissioner of the Communications Security Establishment).

<sup>69</sup> *Auditor General Act*, R.S.C. 1985, c. A-17, s. 5.

<sup>70</sup> See *Auditor General Act*, R.S.C. 1985, c. A-17, s. 7.

### III. Summary

The report divides the relevant legislation that applies to national security institutions into two categories: national security related legislation and legislation of general application.

Of the legislation related to national security, the *Emergencies Act*, the *Anti-terrorism Act* and the *Immigration and Refugee Protection Act* refer to *Charter* rights and the need to take them into account. None of these references, however, create any reporting obligations on national security organizations or their monitoring agencies in terms of human rights issues. The *Charities Registration (Security Information) Act* only makes reference to “fair and transparent” decisions, while the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Security Offence Act*, the *Canada Evidence Act*, the *Criminal Code* and the *Income Tax Act* make no reference to human rights or the *Charter*, nor create any relevant reporting obligations.

Legislation of general application includes the *Financial Administration Act (FAA)*, the *CHRA* and the *Charter*. While the *FAA* creates general financial reporting obligations, none of the obligations contained in the *FAA* encompass a requirement to report on human rights issues. The *CHRA* and the *Charter* require federal institutions to comply with general anti-discrimination provisions, but they too do not create any direct obligation on national security agencies to report on their compliance with these rights.

While the legislation reviewed imposes, at best, limited human rights obligations specific to national security institutions and their monitoring agencies, the review of reports and committee appearances indicates that national security institutions recognize an obligation to identify and protect human rights. The RCMP, for example, has indicated several times in its reports that human rights principles are considered as a guide in the conduct of the organization’s operations. In committee appearances before Parliament, officials also gave considerations to human rights issues, such as profiling on the grounds of race, religion or nationality, respect for diversity in police interactions and the implications of the definition of terrorism under the *Anti-terrorism Act*.

The Commission for Public Complaints Against the RCMP also acknowledged human rights principles as a guide in its review of RCMP activities. Before committee, the Commission Chairman raised particular concern over racial profiling and the lack of effective auditing powers.

In its annual reports, CSIS recognized the respect of human rights as a guiding principle. Before parliament, CSIS officials reaffirmed the need to protect individual rights, expressed concern over racial profiling, and outlined strategies to address human rights issues, including employment equity and greater cultural awareness for its employees.

Both bodies that oversee CSIS – the Inspector General and SIRC – also referred to human rights issues in some form. The Inspector General referenced privacy rights, warrant requirements, and balancing rights and liberties in ensuring national security and public safety. He furthermore affirmed CSIS’s general compliance with all statutory and ministerial direction. SIRC referenced human rights considerations including the collection of information while protecting the rights of Canadians. In parliamentary appearances, SIRC officials made general statements on the need to balance individual rights with national security, and expressed concern over racial and religious profiling.

While CSE reports are not publicly available, the CSE head made a general statement during a committee appearance stating that the organization abides by the *Charter*. Its monitoring agency, the Office of the CSE Commissioner, also raised human rights considerations. The Commissioner made similar statements before a parliamentary committee.

The only organization that made no reference to human rights issues was the Office of the Auditor General as its mandate is to monitor financial stewardship.

#### **IV. Conclusion**

This report began by noting that national security has been a central concern for governments and citizens alike since the events of September 11, 2001. In response to that concern, the Canadian Government has put in place new legislative measures. In the Canadian context, national security concerns must be situated against the backdrop of the *Charter* and the *CHRA*, paramount legislation that require all federal institutions to refrain from discrimination in keeping with human rights principles. As legislation has given new powers to national security agencies, concerns have been raised about proper oversight mechanisms on the use of these powers. This report, then, has two purposes. First, to assess the extent to which national security organizations and their monitoring entities are directed by legislation to consider and report on the respect of human rights principles. Second, to assess the extent to which national security organizations and their monitoring entities have reported on the respect of human rights principles.

The review indicates that the RCMP, CSIS, and the CSE have all recognized an obligation to identify and protect human rights in the context of national security. They raise human rights issues as considerations in the conduct of their activities, as guiding principles, and in response to parliamentary questions. But this reporting is voluntary and *ad hoc*. Although their references indicate a general awareness of human rights issues, and their staff training programs demonstrate attempts to sensitize employees to human rights, none of these agencies directly discuss human rights in terms of statutory compliance. At the same time, these agencies are not mandated by their enabling legislation or any other piece of legislation to report on human rights issues.

Similarly, the monitoring agencies (the Complaints Commission, the Inspector General, SIRC and the CSE Commissioner) are not mandated to report on human rights issues. They do, however, have certain monitoring powers that would allow them, if fully used, to exercise some human rights oversight. SIRC holds the power to audit CSIS with regard to statutory compliance, including the *CHRA*. The Inspector General has also the authority to confirm CSIS's compliance with legislation. The CSE Commissioner issues statements of legislative compliance in reviewing the CSE, but it is not mandated nor required to report or consider human rights. On the other hand, the Chairman of the Complaints Commission expressed frustration with the office's limited access to information, and requested auditing powers enjoyed by other monitoring bodies.

As this report further reveals, even though the *Charter* and the *CHRA* mandate national security organizations to consider human rights in fulfilling their activities, and they themselves recognize this obligation, there exists no legislated reporting obligation to confirm their compliance. Some monitoring agencies have the capacity to oversee human rights by means of their general monitoring authority. However, none, with the possible exception of the Complaints Commission, have explicitly used those powers to verify whether these agencies have complied

with human rights legislation in the course of addressing national security issues. In spite of legal obligations outlined in the *Charter* and the *CHRA*, human rights considerations and reporting by the Canadian national security establishment appears incomplete and more like a patchwork of irregular voluntary reporting and *ad hoc* statements.

Developing specific legislative reporting obligations and reporting mechanisms would provide Parliamentarians with the information by which to adequately hold national security establishments accountable with regard to their obligation towards human rights protection. Because existing human rights legislation such as the *Charter* and *CHRA* create no reporting obligations, another mechanism is required to enhance human rights accountability in national security institutions.

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## **Appendix: List of Acronyms**

A.R.: Annual Report

*ATA: Anti-terrorism Act*

*CHRA: Canadian Human Rights Act*

CHRC: Canadian Human Rights Commission

CSE: Communications Security Establishment

CSIS: Canadian Security Intelligence Service RCMP: Royal Canadian Mounted Police

D.P.R.: Departmental Performance Report

*FAA: Financial Accountability Act*

*IRPA: Immigration and Refugee Protection Act*

RCMP: Royal Canadian Mounted Police

R.P.P.: Report on Plans and Priorities

SIRC: Security Intelligence Review Committee