

Security Intelligence
Review Committee



Comité de surveillance des activités
de renseignement de sécurité

Section 42 Complaint Process before the Security Intelligence Review Committee (SIRC)

Presented by:

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Deputy Executive Director

And

Shayna Stawicki

Registrar/ Paralegal

September 13th, 2016

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SIRC 101: General Overview of SIRC

*Mandate, History, SIRC Committee, SIRC Staff,
Core Functions, Annual Report*

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History

Both the **Canadian Security Intelligence Service** (“CSIS,” or “the Service”) and the **Security Intelligence Review Committee** (“the Committee” or “SIRC”) were established in response to abuses by the RCMP Security Service.

McDonald Commission (1981): Called for greater control and accountability of Canada’s security intelligence activities

CSIS Act (1984): Legislation that created CSIS, which reports to the Minister of Public Safety and Emergency Preparedness, and SIRC, which reports to Parliament.



Mandate

SIRC is an independent external review body that provides assurance to Parliament, and by extension to all Canadians, that CSIS investigates and reports on threats to national security in a manner that respects the law and the rights of Canadians.

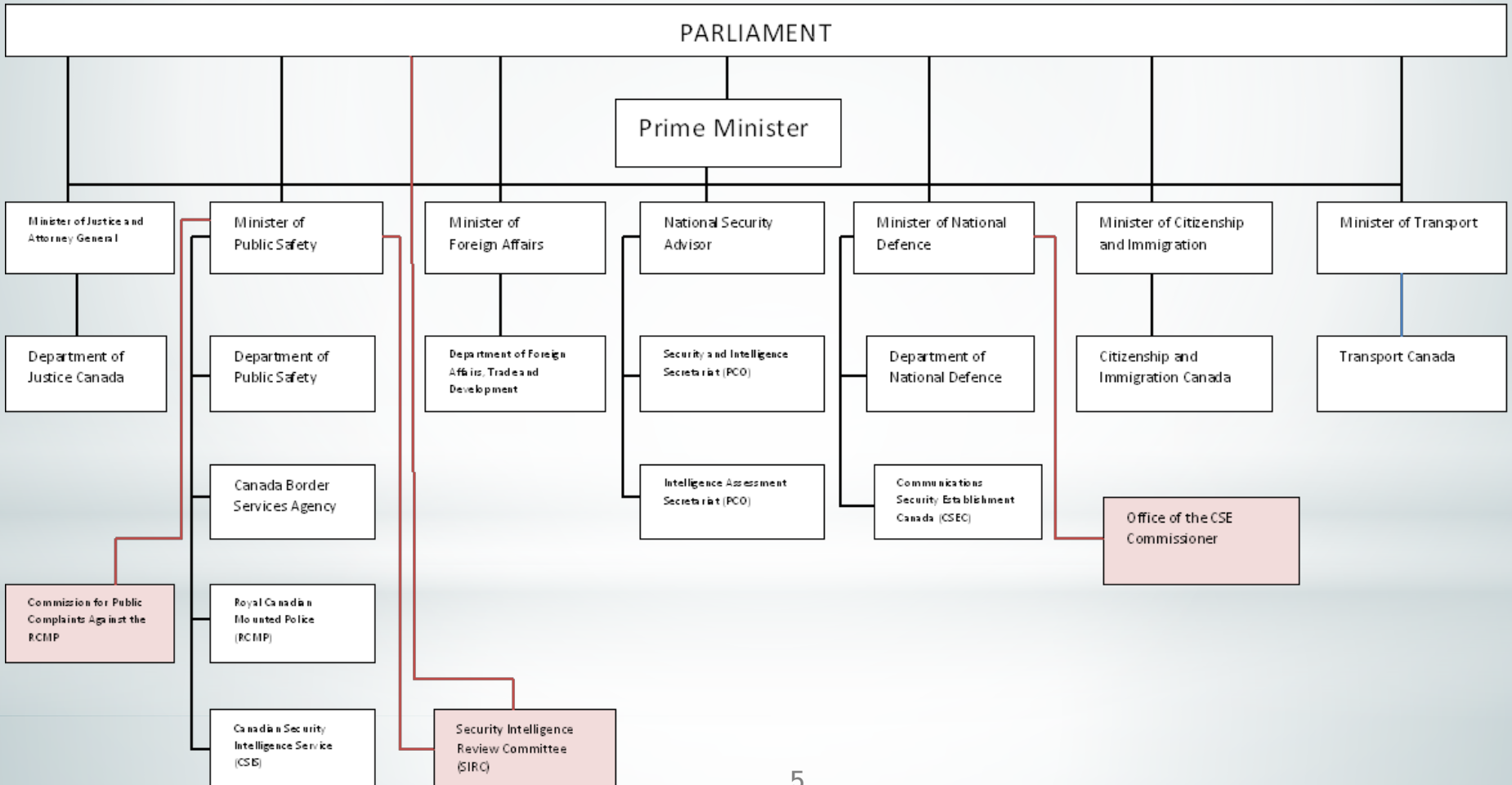
With the **sole exception** of Cabinet confidences, the *CSIS Act* gives SIRC the right to have “access to any information under the control of the Service,” regardless of how sensitive or highly classified that information may be.

SIRC is not involved in day-to-day operations of the Service but has developed a comprehensive understanding of the Service's activities.

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About the Committee

- ✓ Independent committee at arm's length from Government;
- ✓ Three to five “eminent Canadians” who serve part-time for a five-year term, supported by approximately 20 full-time employees;
- ✓ Members of the Privy Council, not members of the House or Senate; and
- ✓ Appointed by the Governor in Council after consultation by the Prime Minister, the Leader of the Opposition and the leader of each party with at least 12 seats in the House of Commons.

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2016-2017 Committee Members

Pierre Blais, P.C., Chair – Appointed May 1st 2015

Former Chief Justice of the Federal Court of Appeal and former Cabinet Minister

L. Yves Fortier, P.C., C.C., O.Q, Q.C. – Appointed August 8th 2013

Former Ambassador and Permanent Representative to the United Nations in New York and former President of the Security Council of the United Nations.

Ian Holloway, P.C., C.D, Q.C. – Appointed January 30th 2015

Dean of Law at the University of Calgary

Marie-Lucie Morin, P.C. – Appointed May 1st 2015

Former National Security Advisor

Gene McLean, P.C. – Appointed March 7th 2014

Security consultant, former RCMP Officer and former Vice President and Chief Security Officer for TELUS Corporation. 7

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SIRC Staff

- full-time employees including research staff, lawyers, a registrar/ paralegal and administrative staff who support the Committee and ensure daily operations;
- Individuals from different academic and professional backgrounds who all have **extensive** experience in handling the most sensitive national security issues.



Why have a SIRC?

SIRC has been providing impartial and objective retrospective review of CSIS's activities for more than 30 years. Our principal role is to advise the Service and those bodies of government that direct it; our reviews and complaints decisions often include findings or recommendations that may help these bodies to modify policies and procedures as needed.

- ✓ Complete independence/autonomy
- ✓ Professional, highly specialized expertise – *the only review body with the expertise to properly review CSIS*
- ✓ Valuable contributor to the national security community

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SIRC has three core functions:

1. Carrying out in-depth reviews of CSIS's activities;
2. Conducting investigations; and
3. Certifying the CSIS Director's Annual Report to the Minister of Public Safety and Emergency Preparedness.



1. Reviews

On average, SIRC conducts approximately nine in-depth reviews of CSIS's activities and operations per year.

When viewed together and over time, these provide a broad picture of Canada's security intelligence landscape. The information and recommendations garnered from these reviews can impact CSIS's current and future operations.

An edited summary of each review and CSIS's response is included in SIRC's *Annual Report* to Parliament. Selected reviews are also available on SIRC's website: www.sirc-csars.gc.ca



SIRC's reviews consider:

- ✓ Developments in Canadian security intelligence and national priorities;
- ✓ New directions/initiatives by CSIS;
- ✓ The potential for particular activities to infringe upon individual rights and freedoms;
- ✓ Issues identified through complaints; and
- ✓ The CSIS's Director's annual report to the Minister of Public Safety.



2. Investigations

SIRC conducts investigations in the following instances:

- ✓ Complaints about “any act or thing done by the Service” (Section 41 of the *CSIS Act*);
- ✓ Complaints about denials or revocations of security clearances to federal government employees and contractors (Section 42 of the *CSIS Act*); and
- ✓ Far less frequently, in relation to referrals from the Canadian Human Rights Commission or the *Citizenship Act*.



About Investigations

- SIRC must have the jurisdiction (as per the *CSIS Act*) to investigate the complaint;
- Complaints are investigated through a quasi-judicial hearing presided over by a Committee member, assisted by SIRC's staff and legal team;
- Hearings are conducted in private. In the event that either party needs to present evidence of a classified nature, an *ex parte* hearing is held; and
- Upon completion of the investigation, a report is provided to the Director of CSIS and to the Minister of Public Safety, and a declassified version is sent to the complainant.



3. Certification of the CSIS Director's Annual Report

- The *CSIS Act* requires the **CSIS Director** to provide a classified annual report to the Minister of Public Safety that describes the Service's operational activities; and
- **SIRC** is required to give assurances regarding the legality, reasonableness and necessity of the Service's operational activities as reported to the Minister in the CSIS Director's letter.



The Certificate must include:

- ✓ An assessment of SIRC's satisfaction with the Director's report;
- ✓ Whether the operational activities described complied with the *CSIS Act* and Ministerial Directives; and
- ✓ Whether any of the operational activities described involved an unreasonable or unnecessary exercise of CSIS's powers.



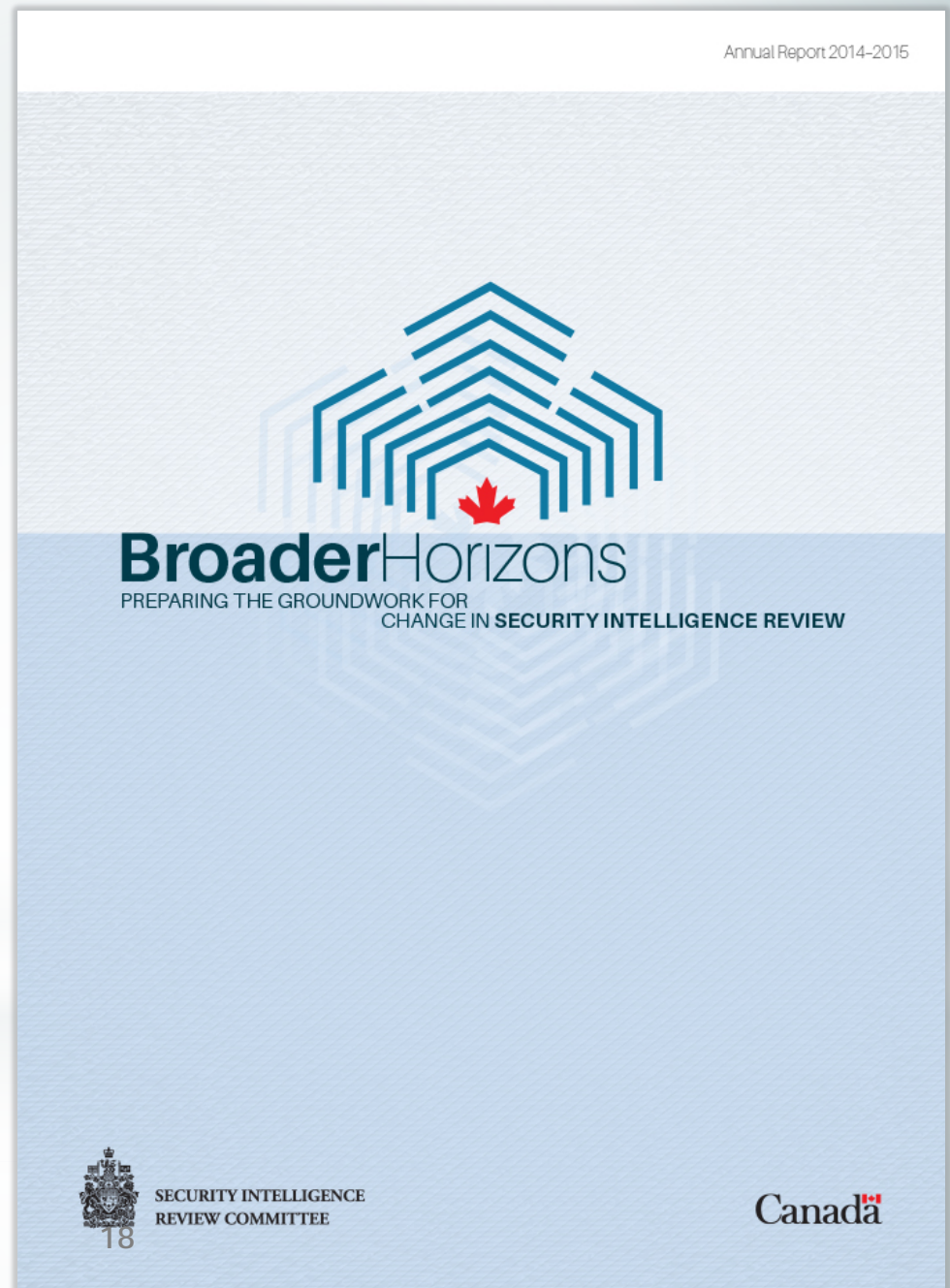
Findings and Recommendations

- ✓ Each year, SIRC requests an update from CSIS on the recommendations arising from the previous year's reviews and complaints decisions.
- ✓ Although SIRC's recommendations are **non-binding**, the Service typically implements a vast majority of the recommendations.
- ✓ SIRC tracks the implementation of its recommendations in its Annual Report.

The 2014-2015 Annual Report, tabled in January 2016, contains:

- Information on the certification of the CSIS Director's report;
- Unclassified summaries of our reviews and complaints investigations; and
- Our recommendations to CSIS and CSIS's responses.

Under the *CSIS Act*, SIRC must submit its Annual Report to the Minister of Public Safety and Emergency Preparedness no later than September 30th. The Minister must then table SIRC's report in Parliament within 15 days of the House sitting.



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Section 42 Complaints Process

Phases and Steps of SIRC Investigations

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Key Takeaways

- 1- Demystifying the SIRC Process:
Better understanding of the s. 42 complaint
process at SIRC
- 2- Understanding your role as a DSO/ member of the
security community during the conduct of a SIRC
s. 42 investigation

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Governing Legislation and Policies for Section 42 Complaints at SIRC:

- 1- *CSIS Act*
- 2- *SIRC Rules of Procedure*
- 3- *TBS's Policy on Government Security*

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Section 42(1) of the CSIS Act states:

“Where, by reason only of the denial of a security clearance required by the Government of Canada, a decision is made by a deputy head to deny employment to an individual or to dismiss, demote or transfer an individual or to deny a promotion or transfer to an individual, the deputy head shall send, within ten days after the decision is made, a notice informing the individual of the denial of the security clearance.”

****What is the purpose of a SIRC s. 42 investigation?***



Scope of SIRC's Jurisdiction

Does SIRC have jurisdiction to investigate:

1. Security Clearances: **YES**
2. Reliability Statuses: **NO**
3. Site Accesses: **YES, but traditionally not per section 42**

*****Be mindful of the difference between security clearance vs reliability status***

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3 PHASES OF A SIRC INVESTIGATION

Phase 1: Intake

Phase 2: Complaint

Phase 3: Investigation



SIRC STEPS OF INVESTIGATIONS

Step 1: SIRC receives intake

Step 2: Complaint complete

Step 3: Representations on Jurisdiction

Step 4: Preliminary Review done by SIRC

Step 5: Designated SIRC member determines whether SIRC
has jurisdiction



SIRC STEPS OF INVESTIGATIONS (ctd.)

Step 6: Once SIRC has determined that it has jurisdiction, *all* parties will be advised of:

- The determination of jurisdiction,
- The presiding SIRC member assigned,
- The requirements of section 48 of the *CSIS Act* and
- Complainant's right to hearing

Step 7: Statement of Circumstances

- SIRC requests disclosure from DH



SIRC STEPS OF INVESTIGATIONS (ctd.)

Step 8: *Ex Parte* Hearing

- Quasi-judicial nature
- Who is allowed in hearing room?
- Summary of Evidence

Step 9: *In Camera* Hearing

- How is it different from an *ex parte* hearing?
- Pre-hearing conference
- Oral hearing vs written hearing
- Transcripts



SIRC STEPS OF INVESTIGATIONS (ctd.)

Step 10: Final Submissions

Once the evidence phase is complete, SIRC will send the parties letters to request their final submissions. CSIS and the DH are to provide their final submissions first.

Step 11: Final Report

The presiding member outlines the findings and recommendations



CHALLENGING SIRC'S DECISION

What if the Deputy Head disagrees with SIRC's recommendation(s)?

What if a Complainant disagrees with SIRC's recommendation(s)?

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Questions?