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National Security and Intelligence
Committee of Parliamentarians



Comité des parlementaires sur la
sécurité nationale et le renseignement

Remarks by the Hon. David McGuinty, P.C., M.P., Chair of the National Security and Intelligence Committee of Parliamentarians on the tabling in Parliament of the NSICOP 2019 Annual Report and Special Report, March 12, 2020

Good morning, Ladies and Gentlemen.

Thank you for joining us. With me is Rennie Marcoux, the Executive Director of the Secretariat.

Earlier today, two reports of the National Security and Intelligence Committee of Parliamentarians, or NSICOP, were tabled in Parliament. Our second annual report ; and a special report on defence intelligence.

These reports were submitted to the Prime Minister on August 30, 2019. They are the result of the dedicated work of my colleagues on the 2019 Committee, Senators and Members of Parliament from all major parties and groups.

I want to personally thank Senators Frances Lankin, Percy Downe and Vern White; and Members of Parliament Emmanuel Dubourg, Diane Finlay, Hedy Fry, Gudie Hutchings, Rob Nicholson, Murray Rankin, and Brenda Shanahan for their hard work.

Since the federal elections, we have a new Committee, with some returning members and some new ones. Already we have been hard at work, and look forward to announcing our work plan for 2020 in due course.

It is a privilege to serve on this important and non-partisan Committee on behalf of our colleagues in Parliament and on behalf of all Canadians.

As I have said before, these reports are intended to contribute to an informed and mature debate on the difficult challenges of providing security and intelligence organizations with the exceptional powers necessary to identify and counter threats to the nation, while at the same time ensuring that their activities continue to respect and preserve our democratic rights.

Please note that NSICOP and its secretariat remain available to brief parliamentarians on both reports, if and when requested.

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Mandate of NSICOP

The mandate of NSICOP is to:

- ✓ Review the overall framework for national security and intelligence in Canada;
- ✓ Examine any activity that is carried out by any department that relates to national security or intelligence; and,
- ✓ Review any matter relating to national security or intelligence that may be referred to the Committee by a Minister.

Before members are appointed to the Committee, they must all obtain a Top Secret clearance, and swear an oath of office. Members are permanently bound to secrecy under the Security of Information Act, and, in the context of NSICOP's work, they waive their parliamentary privilege.

These security requirements allow the Committee to have access to highly classified information necessary to fulfill its mandate and conduct reviews.

This is the first time in Canadian history that a committee of parliamentarians have access to such information.

This also means that our meetings are not open to the public nor televised like regular Committees of Parliament.

Overview of the three reviews in the Annual Report and a Special Report

The reports tabled today are the revised versions, absent information deemed injurious to national security, national defence, international relations, or solicitor client privilege.

Revisions are marked in the text of the reports, and where possible, we offer an unclassified summary of the information that was redacted.

In total, the annual report makes 19 findings and eight recommendations to the government.

The Special Report makes four findings and three recommendations to the government.

Let's begin by discussing the Committee's three substantive reviews in the Annual Report.

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Turning to our first review: Diversity and Inclusion in the security and intelligence community

A diverse workforce is made up of individuals with an array of identities, abilities, perspectives and experience.

An inclusive workforce is fair, equitable, supportive, welcoming and respectful.

Why did the Committee decide to review these issues in the security and intelligence community?

First, there are persistent challenges to increasing diversity and inclusion in the S&I community even after decades of legislation, multiple reports and repeated calls for change.

Second, the Committee believes that organizations responsible for defending Canada and protecting Canadians must leverage the broad range of skills, talent, experience and perspectives that our country has to offer.

And third, as shown in numerous international reports and studies on S&I organizations, a diverse and inclusive workforce is critical to operational success and performance.

This first-ever review provides a baseline of where the S&I community as a whole is in terms of diversity and inclusion for the four designated groups under the Employment Equity Act: women, Aboriginal peoples, members of visible minorities and persons with disabilities.

Our review shows that in the national security and intelligence agencies overall, the representation of these designated groups is lower than the overall Canadian public service. More specifically, members of visible minorities are under-represented across the S&I community relative to their availability in the workforce.

And, perhaps more troubling, rates of harassment and discrimination remain unacceptably high.

Our Committee saw evidence that the leaders of our national security agencies are all committed to improving diversity and inclusion in their respective workforce.

But as detailed in our report, sustained leadership, a broad commitment and increased accountability right across the community is essential to ensure these organizations fully reflect and include Canada's diversity.

The Committee recommends a future review in three to five years to assess the community's progress in this area.

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We also recommend:

- ✓ A more consistent and transparent approach to the monitoring of employment equity;
- ✓ Improved data collection and analysis; and
- ✓ a common set of performance measures to strengthen accountability for diversity and inclusion.

Let me now turn to the second review in the 2019 Annual Report: The government response to foreign interference

This review examined:

1. the threat facing Canada from foreign interference; and,
2. the government's response to that threat.

On both fronts, the Committee heard testimony from dozens of officials from the Canadian security and intelligence community, reviewed thousands of pages of documentation, both classified and open source, and deliberated at great length.

First the threat:

Our democratic institutions – an independent media, civil society, academia, and our electoral system and process – support effective, accountable and transparent government.

However, the review demonstrates that those same institutions are also vulnerable to foreign actors seeking to covertly and inappropriately interfere or exert influence in Canada.

The Committee's review focused on traditional means of foreign interference, in other words 'person to person' engagement. The review did not focus specifically on cyber interference.

The Committee sought to present a clear description of the magnitude and nature of the challenge of foreign interference in Canada. The Committee's assessment of the threat is best described at paragraph 189 on page 77, and I quote:

"The Committee believes there is ample evidence that Canada is the target of significant and sustained foreign interference activities. ***The PRC, the Russian Federation, other states.*** The Committee believes that these states target Canada for a variety of reasons, but all seek to exploit the openness of our society and penetrate our fundamental institutions to meet their objectives. They target ethnocultural communities, seek to corrupt the political process, manipulate the media, and attempt to curate debate on postsecondary campuses. Each of these activities poses a significant risk to the rights and freedoms of Canadians and to the country's sovereignty: they are a clear threat to the security of Canada."

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Now let me turn to the government's response to this threat.

The Committee conducted a thorough examination of the primary security and intelligence organizations responsible for investigating and countering the threat of foreign interference: CSIS, Global Affairs Canada, the Privy Council Office, Public Safety Canada, and the RCMP.

We undertook a deep-dive into the extent and sufficiency of interdepartmental coordination; we examined a series of case studies of Canadian responses to instances of foreign interference in Canada; we examined the extent to which the Government of Canada engaged with other orders of government and the Canadian public; and finally, we examined international collaboration and coordination.

The review found that:

- ✓ the interdepartmental coordination and collaboration on foreign interference was done on a case by case, even ad hoc basis;
- ✓ there are differences in how individual organizations interpret the gravity and prevalence of the threat; and
- ✓ the federal government's engagement with provincial and municipal governments and the Canadian public on the threat from foreign interference has been limited.

That is why the Committee recommends a whole-of-government strategy to counter foreign interference and to build institutional and public resiliency.

It also recommends that the government support this strategy through sustained central leadership and coordination.

Let me now turn to our third review: The national security and intelligence activities of the Canada Border Services Agency

The Committee conducted a first-ever independent review of the most sensitive national security and intelligence activities of the Canada Border Services Agency, a core part of Canada's national security and intelligence community.

The review included an examination of the following activities:

- scenario-based targeting ;
- surveillance activities;
- the use of confidential human sources ;
- lookouts (that is electronic records that flag high-risk persons or goods for further examination); and,
- CBSA's joint operations with other law enforcement or security partners.

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The Committee obtained and analyzed more than 16,000 documents from CBSA on its activities and its partnerships with the RCMP, CSIS, and Immigration, Refugees and Citizenship Canada. We also met on several occasions with the CBSA's senior leadership.

In reviewing the records provided by CBSA, the Committee found that CBSA's authorities to conduct national security and intelligence activities are clear, and supported by several statutes.

The Committee also found that CBSA's exercise of its security and intelligence authorities is well-governed.

We are satisfied that CBSA has implemented formal guidance, policy and standard operating procedures that identify risks and corresponding mitigation measures.

However, CBSA does not have ministerial direction for its conduct of sensitive national security and intelligence activities. This is inconsistent with the practice at CSIS and the RCMP, and in the Committee's view, is a gap in ministerial accountability.

That is why the Committee recommends that the Minister of Public Safety issue formal direction to CBSA on the conduct of its sensitive national security and intelligence activities.

This concludes the reviews contained in the Annual Report.

Turning now to the Committee's special report on the collection, use, retention and dissemination of information on Canadians in the context of intelligence activities conducted by the Department of National Defence and the Canadian Armed Forces. I will refer henceforth to both of these entities simply as DND.

This special review resulted from the Committee's 2018 review of DND's defence intelligence activities. Near the end of that process, DND provided the Committee with an internal directive that gives guidance to troops and employees on how to manage the collection of Canadian citizen information. This is known as the "CANCIT Directive."

The Committee did not have sufficient time to analyze that directive, and instead concluded that a special review was important to undertake for three key reasons:

- ✓ One, the collection of information on Canadians is clearly a critical and sensitive issue;
- ✓ Two, the Committee wanted to understand exactly what laws govern the collection, use, retention and dissemination of information about Canadians by DND; and,

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- ✓ Three, the Committee wanted to assess whether or not the practical application of this directive gave rise to any legal and/or operational risks.

In short, here is what NSICOP has found:

The Committee concludes that the CANCIT directive lacks clarity.

On the one hand, in 2018, DND asserted that they do not target Canadians as part of their defence intelligence activities.

But a plain reading of the CANCIT Directive, at Annex A of the Special Report, appears to authorize precisely that.

Given this apparent contradiction, the Committee recommends that DND rescind the CANCIT directive.

In fact, the Committee goes further: it calls upon DND to work with the Privacy Commissioner to review all of its defence intelligence directives and relevant policy instruments.

What else did the Committee find?

It found – and I want to be very clear here - that DND believes that the Privacy Act does not apply to its overseas operations.

As a result, the Committee formed an opinion that DND defence intelligence activities conducted as part of overseas operations may not be in compliance – let me stress again – **may not be in compliance** with the Privacy Act.

Which led the Committee to refer this matter to the Attorney General, in accordance with its obligation under Section 31.1 of the NSICOP Act, which reads as follows:

“The Committee must inform the appropriate Minister and the Attorney General of Canada of any activity that is carried out by a department and is related to national security and intelligence and that, in the Committee’s opinion, may not be in compliance with the law.”

The Committee also calls on the Minister of National Defence to ensure the Department complies with the letter and spirit of the Privacy Act in all of its defence intelligence activities whether they are conducted in Canada or abroad.

As part of this review, the Committee again examined DND’s reliance on the Crown Prerogative as the legal basis for defence intelligence activities.

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During this examination, DND stated that it is their belief that an exercise of the Crown Prerogative could, in the future, provide them with the authority to direct their intelligence activities at Canadians.

The Committee considered this matter carefully and concluded that the Crown prerogative may not prove to be an adequate source of authority to undertake such activities.

In fact, this analysis reinforced and indeed strengthened the Committee's 2018 assessment and recommendation that defence intelligence activities require a formal statutory basis.

This is why the Committee recommends that the Minister of National Defence introduce legislation governing defence intelligence activities.

Conclusion

To conclude, the Committee wishes to thank all organizations and officials involved in this series of reviews.

I would be remiss, however, if I did not mention that the Committee faced some challenges in getting information from certain departments that it deemed relevant to its work.

These challenges are described in the foreword to the Annual Report; and I have discussed them at length with the Prime Minister.

We are presently following up with the Prime Minister's National Security and Intelligence Advisor and we look forward to enhanced cooperation from all members of the security and intelligence community.

And finally, with reference to both reports tabled today, it is the Committee's sincerest hope that its findings and recommendations will help to make the national security and intelligence community more accountable and more effective.

I now look forward to your questions.