



True North in
Canadian public policy

Commentary

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Bringing Security and Intelligence Into Focus: How to Clarify the Roles of Newly Created Accountability Bodies

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Introduction

Canadians have been seeking reassurance that the country's intelligence and security agencies (ISAs) are meeting their expectations, obligations, and commitments. This is especially true in the wake of a rapidly changing security environment, expanded government powers after 9/11 to contain terrorism, disclosures by the likes of Edward Snowden and Chelsea Manning, and the impending expansion of the Communications Security Establishment's (CSE) mandate.

Canadian ISAs are held accountable by a vast, complicated system of legislation, ministerial responsibility, internal review and oversight, independent expert review, and judicial oversight.

The last substantial update to the Canadian intelligence accountability system dates back to the 1980s and 1990s, when the Security Intelligence Review Committee (SIRC), the Office of the Communications Security Establishment Commissioner (OCSEC), and the Commission for Public Complaints Against the Royal Canadian Mounted Police (now the Civilian Review and Complaints Commission, or CRCC) were established to provide expert review of the Canadian Security Intelligence Service (CSIS), the CSE, and the Royal Canadian Mounted Police (RCMP), respectively. Functions carried out by these three agencies merit heightened scrutiny because they are explicitly authorized to engage in covert activity for the purpose of safeguarding Canadians, Canada, and the democratic way of life.

The authors of this document have worked independently and are solely responsible for the views presented here. The opinions are not necessarily those of the Macdonald-Laurier Institute, its Directors or Supporters.

However, critics have lamented the lack of parliamentary involvement, efficacy review, provisions allowing collaboration between independent expert review bodies, and independent review or oversight for ISAs beyond CSIS, CSE, and the RCMP. In theory, the remit might include all 16 departments and agencies that have intelligence functions, plus the Department of National Defence. In practice, the two departments at the core of Canada's intelligence community that are beyond the remit of the current review system are the Canada Border Services Agency and Global Affairs Canada.

After unsuccessful attempts to do so in 2005, 2007, 2009, and 2014,¹ the current government is making good on a long-standing Liberal commitment to update and modernize the review, oversight, and accountability for ISAs: it has passed *Bill C-22: An Act to Establish the National Security and Intelligence Committee of Parliamentarians* (2017), and introduced *Bill C-59: An Act Respecting Security Matters* (2017). Together these two pieces of legislation establish three new accountability bodies: (1) the National Security and Intelligence Committee of Parliamentarians (NSICOP) will address the lack of parliamentary involvement in intelligence accountability; (2) the proposed National Security and Intelligence Review Agency (NSIRA) would eliminate silos between expert review bodies and increase the number of ISAs subject to independent review;² and (3) the proposed Intelligence Commissioner (IC) would approve certain authorizations for CSE and CSIS, as a form of oversight.³

Together, Bills C-22 and C-59 have the potential to address existing shortcomings in the accountability system and advance innovation across the federal intelligence and security community. However, just how effective C-22 and C-59 will be in remedying these shortcomings depends on how NSICOP and NSIRA will coordinate with each other and other accountability bodies.

To that end, this commentary analyses the existing accountability framework, assesses the changes Bill C-22 and C-59 propose, and explains how NSICOP and NSIRA have the potential not only to compensate for shortcomings, but also to enhance and offer innovations to the Canadian national security and intelligence accountability system.

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Scope and Mandate

Bills C-22 and C-59 are meant to address deficiencies in Canada's current system of accountability by expanding the scope and nature for holding ISAs accountable. Three aspects of intelligence accountability inform the scope and mandate of an accountability body: whether (1) an ISA is being held accountable through review or oversight; (2) the accountability body that is carrying out the assessment is reviewing an ISA for efficacy or compliance; and (3) the accountability body is helping the ISA introduce innovations to its practices and procedures. Of course, these are not mutually exclusive: by way of example, review can and has improved policies and procedures, and thus has some inherent capacity to make the organization that is under review more effective. Table 1 maps current and proposed scopes and mandates of Canadian review and oversight bodies.

Table 1

	Review	Oversight	Compliance	Efficacy	Innovation
OCSEC	X		X		
SIRC	X	X*	X	X	X
CRCC	X		X	X	
NSICOP	X		X	X	X
NSIRA	X		X	X	X
IC		X		X	

* SIRC predominantly conducts review, but in select cases has also conducted oversight.

Review

In Canada, review is a function carried out by an appointed body or individual who examines the conduct of a specific agency or department *retrospectively* (Jones 2015). By contrast, oversight bodies analyse the activities of a department or agency on an *ongoing, real-time*, and, in some cases, *pre-emptive*⁴ basis. The difference between the two is, therefore, a function of timing.

Review bodies commonly adopt an ask-and-wait approach to review: the body requests information from the ISA for which it is responsible and waits to hear back.⁵ This involves some risk: if a review body relies on the ISA to select information, selection bias is a real possibility. Furthermore, constraints in time and staff limit the ability of the bodies to review intelligence activities (Macleod 2016). Thus, review bodies usually zero in on specific topics, run spot checks on select activities, and test information received by verifying in agency databases that the information is complete and accurate. Since NSICOP, the parliamentary body created by Bill C-22, must request information from departments, it will likely use similar strategies to hold ISAs accountable: ask questions, submit requests, and wait for an answer. Still, given most parliamentarians' lack of extensive experience in intelligence and security, NSICOP will be at an asymmetric information and expertise disadvantage: an agency that wants to elude the committee might resort to inundating NSICOP with information to evade and obfuscate.⁶ However, the likelihood of this occurring would be minimized if they were able to coordinate with NSIRA, created by C-59, which will be composed of former SIRC members and staff – keeping in mind the latter's information-sharing limits.⁷

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Although OCSEC, SIRC, and the CRCC do ask and wait for information, they can – and do – use other methods to review their respective ISA. The methods Canada's review bodies use are a function of their asymmetric mandates and remits. SIRC's mandate covers a broad spectrum of CSIS's activities. SIRC can review CSIS for efficacy and innovation as well as compliance. SIRC can recommend ways for CSIS to improve its operational performance and do its job better. OCSEC's mandate is limited to assessing the lawfulness of CSE's activities, with two restrictions of heightened concern: (1) that no CSE activities are directed at Canadians and (2) that the

privacy of Canadians is protected. Although CRCC does not have an explicit mandate to review for efficacy, it can review activities related to efficacy under section 45.34 (1) of the *RCMP Act* (1985) in addition to conducting compliance reviews.

OCSEC, then, observes CSE operators and analysts, interviews CSE managers and employees, conducts spot checks of activities authorized by ministerial authorizations, listens to intercepted voice recordings, examines written content or the associated transcripts of the communications, and more (OCSEC 2016). By contrast, SIRC reviews CSIS's regulations, ministerial directions, and arrangements with federal, provincial, and foreign agencies. SIRC also receives and investigates complaints, compiles and analyses statistics on operational activities, examines surveillance, targeting authorizations and other matters, and conducts community interviews as part of its reviews of CSIS's regional offices (SIRC 2012). For the RCMP, CRCC receives and investigates complaints, interviews personnel, examines operational files and surveillance, and reviews policies and training material.

In short, the strategies that OCSEC, SIRC, and CRCC use showcase the methods available to accountability bodies: inquiries, interviews, and spot checks; observing personnel first-hand; and receiving and investigating complaints. These methods are premised on access to classified information.

The limits of the ask-and-wait approach suggest that NSICOP may not want to resort solely to requesting information from ISAs. Although the government's intention is to have NSICOP review high-level issues, the Committee could nonetheless collaborate with NSIRA, resources and time permitting, on issues of which the public is concerned. NSIRA will have a larger secretariat, with experience in intelligence review,⁸ and will use accountability methods similar to those employed by OCSEC and SIRC (given NSIRA's mandate to receive and investigate complaints related to any activity carried out by CSIS or CSE).⁹ NSIRA could, therefore, deploy its resources and methods to assist NSICOP's secretariat in areas of mutual interest.

Oversight

Whether it would be appropriate to increase the remit of oversight in Canada is partially a function of unclear and misused terminology. In Canada, oversight can mean operational control and coordination (Forcese and Roach 2016).¹⁰ This type of oversight should be exercised within the ISAs and at the Privy Council Office (PCO), but not in independent review bodies because it would bring them into the chain of command and usurp the role of Ministers, Courts, etc.

SIRC carries out activities akin to oversight – albeit in a way that neither controls nor constrains CSIS – while ensuring on-going operations are legal, appropriate, and effective.¹¹ To enhance accountability, oversight operations can also examine raw and processed data from within and outside the organization to provide near real-time situational awareness, economic intelligence, early warning indicators, anomaly detection, actionable insights, and alternative analysis. Notwithstanding misconceptions of what oversight is and how it is put into action, oversight can – and has – enhanced the effectiveness, efficiency, and compliance of ISAs.

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Ultimately, however, due to the degree and culture of compliance among Canadian ISAs, more external *oversight* of the kind that imposes additional time, cost and effort on accountability bodies and ISAs, would add little value in Canada. As such, the government should increase oversight in Canada only if it will actually add value to Canadian intelligence accountability – a case that has yet to be made convincingly.

Efficacy and compliance

Efficacy focuses on making ISAs more efficient, effective, and responsive to changes in the security and intelligence environment. Compliance ensures that ISAs adhere to law, policy, mandates, and ministerial directives and authorizations.¹²

OCSEC conducts compliance reviews of CSE's adherence to privacy legislation. The first duty of the CSE Commissioner is to "review the activities of the Establishment to ensure that they are in compliance with the law" (*Bill C-36 2001 adding Part V.1 to the National Defence Act*). SIRC, by contrast, has a wider remit. Its mandate is to "review generally the performance by the Service [CSIS] of its duties and functions" (*Bill C-23: Canadian Security Intelligence Service Act 1985*). This includes compiling and analysing statistics on operational activities, as well as reviewing regulations and ministerial directions. For example, SIRC's 2016-2017 Annual Report recommended that all employees with warrant-related responsibilities should receive standardized and comprehensive training on an on-going basis. CRCC's mandate lies in between OCSEC's and SIRC's: CRCC predominately assesses the RCMP's compliance with the law, but can also review for efficacy.

An accountability system needs to have elements of both efficacy and compliance. Both SIRC and CRCC can review issues related to efficacy, but their remit is limited to CSIS and the RCMP respectively. Under their mandates, NSICOP and NSIRA have the power to extend efficacy review across the remainder of Canada's intelligence and security community. However, they run a serious risk of duplication if it is not clearly stipulated which body is to assess the efficacy of what issue.

Innovation

The final aspect of intelligence accountability to consider is innovation. There are four aspects to innovation: improve the way ISAs do business, improve legislation, set standards, and identify emerging trends.

First, accountability bodies do not exist just to provide review or oversight and assess compliance and efficacy. They should also provide feedback to make agencies better at what they do. In the review process, experts inherently also end up assessing intelligence practices; their reports thus also amount to feedback and suggestions on improving practices, operations, and methods to meet evolving needs of government, and to gauge whether the intelligence collected corresponds to government's priorities. Regular assessments and feedback by NSICOP and NSIRA will thus ensure that ISAs are aligned with the policy priorities set by government, and are optimizing their resources, methods, and approaches to that end.

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A second dimension of innovation includes flagging outdated or flawed legislation. The current mechanism for improving legislation is to issue a Memorandum to Cabinet. However, Cabinet is usually too busy to address important yet mundane legislative maintenance issues. NSICOP could conduct periodic reviews of legislation governing the ISAs and intelligence review to flag areas where improvement is needed and to accommodate technological change. The proposed expansion of CSE's mandate to include Active Cyber Operations is a good example.

Third, standards for oversight or review can help promote innovation. Standards should be flexible to changes in intelligence tradecraft and be based on the type of review methodology that is commensurate with appropriate professional standards: for example, standards could be reviewed by employing methods similar to those used in audits, but tailored to review. As a unified expert review body, NSIRA could draw on its in-house experience and expertise, and the past work of OSCEC and SIRC, to establish standards to promote consistency and quality in intelligence accountability.¹³ That experience, however, is in review methodology generally which can be applied to all departments and agencies being reviewed, whereas actual expertise will take some time to develop.

Fourth, NSICOP and NSIRA would be ideally positioned to promote innovation by identifying common themes across Canada's intelligence and security framework. There is currently no body that identifies, analyses, and reports on emerging trends and potential pitfalls that will, or currently, affect Canada's intelligence and security community as a whole.¹⁴ Both NSICOP and NSIRA could fill this gap.¹⁵ The federal government can use their findings on trends in security and intelligence, whether that be the changing nature of intelligence operations, expectations of civil society, or otherwise, to create policies that address emerging trends and minimize potential concerns. However, if both NSICOP and NSIRA identify emerging trends across Canada's intelligence and security community, they would need to coordinate to prevent duplication.

When creating an accountability body, governments must debate the merits of different accountability strategies. Oversight, review, compliance, efficacy, and innovation are all appropriate in particular contexts. Once chosen, a government's accountability strategies will shape the mandate and functions of the accountability body.

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Coordination, Collaboration, and Support

While Bills C-22 and C-59 lay out the institutional structure and mandates of NSICOP and NSIRA, and the *NSICOP Act (2017)* states that the Committee and review bodies are to “avoid any unnecessary duplication,” they do not detail whether and how NSICOP and NSIRA are to coordinate and collaborate with each other and with other accountability bodies. How new and existing accountability bodies will coordinate and collaborate will determine both how NSICOP and NSIRA will execute their broad mandates, and how they will need to be resourced.

NSIRA and NSICOP

Given the breadth of their mandates, NSICOP and NSIRA could review issues related to efficacy, compliance, or innovation. To prevent duplication, NSICOP and NSIRA will need to coordinate to establish targets and remits for their reviews. When considering the focus of each body, NSICOP and NSIRA should play to their strengths. Since NSIRA will consist of former members and staff of SIRC, it can build on their experience to set standards for review, assess the efficacy and compliance of intelligence activities, and provide feedback and suggestions on how ISAs can improve their practices and operations to meet the needs and priorities of government.

NSICOP will assemble a broad range of perspectives on intelligence and security issues, bringing a parliamentary perspective to scrutinize the business of national security and intelligence. In practice, NSICOP could use its diversity of experience to examine policy departments such as PCO, Public Safety and National Defence in their role of advising Ministers on issues related to national security and intelligence; the Prime Minister's role in setting intelligence priorities; the role of Treasury Board Secretariat in overseeing national security and intelligence expenditures; and interview Ministers on policy issues.¹⁶ NSICOP could also combine its expertise in legal, policy, and administrative issues with NSIRA's subject matter expertise to flag flawed and outdated national security legislation and suggest how it might be improved.

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Duplication can also be minimized by stipulating in Bill C-59 whether and how NSIRA and NSICOP will support each other. Given that its membership has limited experience in intelligence or security,¹⁷ NSICOP will need internal and possibly external expertise to fulfill its mandate. Internally, NSICOP should have a small secretariat¹⁸ knowledgeable in the intelligence tradecraft, with adequate resources. The Secretariat can use their experience and expertise to advise NSICOP proactively on what questions to ask and what information to request from ISAs.

The appointment of Rennie Marcoux (Trudeau 2017), who has practical experience working for and with ISAs, as the executive director of NSICOP's secretariat, suggests that the government grasps the salience of a secretariat with expertise and experience in intelligence tradecraft. Marcoux's experience in government, security and intelligence will also help the Secretariat judge whether a department or agency is trying to evade or obfuscate NSICOP. The Secretariat could also use its expertise to conduct research on past cases, warrants, procedures, and activities to advise NSICOP.

In the extant system, NSICOP could apply to OCSEC, SIRC, and CRCC for external support. However, if Bill C-59 passes, NSICOP will only be able to apply to NSIRA or CRCC for that support. If NSIRA is permitted to provide support to NSICOP, it should be stipulated how much support NSIRA will provide, and how, in practice, it will do so.

NSIRA could offer NSICOP and its secretariat expert analysis or input along with training workshops, similar to what OCSEC organizes for new employees of review bodies.¹⁹ When providing expert analysis, NSIRA would need to ensure that the information it is providing NSICOP does not violate the provisions guiding the latter's access to classified information. How NSIRA would physically share information with NSICOP would also need to be determined. NSICOP, however, should not rely too heavily on NSIRA for expert analysis. NSIRA will have a broader mandate than SIRC or OCSEC and, consequently, might not have time to provide assistance to NSICOP

permanently. As a result, NSICOP would need to rely on its secretariat to give the best advice, options, and analysis to fulfill its mandate, and apply to NSIRA only when it can not answer a question with its in-house expertise.

The degree of cooperation between the two accountability bodies will determine how the ISAs support them. Every member of the Canadian intelligence and security community will need to have an intelligence accountability liaison to answer questions from and brief NSICOP and NSIRA. To minimize duplication and prevent the unnecessary expenditure of resources, ISAs that have not been subject to an independent expert review might ask their parliamentary liaison staff to perform dual roles.

Coordination with CRCC

If Bill C-59 passes, NSIRA will not only be coordinating with NSICOP, but also with CRCC. In the current version of C-59, CRCC will no longer be able to conduct reviews²⁰ or review complaints²¹ that are “closely related to national security.” CRCC will, instead, refer complaints and reviews that are related to national security to NSIRA. Although CRCC will continue to review other aspects of the RCMP, there are three issues of concern that Parliament must contemplate when reviewing amendments related to CRCC in Bill C-59.

First, as a result of the amendments, the RCMP will be the only Canadian ISA that is reviewed by two separate expert review bodies.²² As part of the *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*, Judge Dennis O’Connor (2006) put forth three reasons why the review of the RCMP’s national security activities should be located within the same body that reviews other RCMP activities. The first was that a body reviewing all of the RCMP’s law enforcement activities will be better positioned to develop the expertise and experience necessary to effectively review the Force’s national security activities. It would, consequently, prevent the duplication of work and resources if expertise on the RCMP was consolidated in one expert review body. O’Connor’s second reason was that it is easier to build up an existing agency. This makes sense, as developing new expertise and recruiting individuals with experience in holding the RCMP accountable will be difficult, and committing new resources to review the RCMP will be frivolous.²³ O’Connor’s last reason was that he was satisfied that extant statutory gateways, a national security coordinating committee, and cooperation amongst existing review bodies could effectively review integrated operations. CRCC and NSIRA could coordinate and review joint operations between the RCMP and other ISAs, but they would need to coordinate to prevent the duplication of work.

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Second, CRCC will effectively have discretion over NSIRA’s national security reviews of the RCMP. In the changes outlined in Bill C-59, CRCC will refer national security reviews and complaints to NSIRA. However, it will remain the principal point of contact for national security complaints – and possibly the origin of national security reviews – for the RCMP. Since Bill C-59 does not define national security, CRCC will have discretion over what it means in practice and, consequently, what reviews and complaints get referred to NSIRA. How CRCC defines national security will likely be done on a case-by-case basis,²⁴ and will likely be influenced by its executive.²⁵ Furthermore, in the current version of Bill C-59, if CRCC refers a complaint to NSIRA, NSIRA will be required to review it. There is no clause stating that NSIRA can decline or reject to review an issue or complaint referred to it by CRCC. That puts the CRCC at risk of exercising undue influence over what RCMP national security issues and complaints NSIRA will review.

Third, will NSIRA be able to conduct as comprehensive a review of the RCMP as the CRCC is currently doing? How NSIRA will be resourced is up for debate, but around 75 staff are being discussed.²⁶ CRCC currently has approximately 45 staff just to review the RCMP.²⁷ In consideration of the Agency's broad mandate, NSIRA will likely not dedicate the same number of staff to focus only on the RCMP. Furthermore, unless NSIRA pulls staff from CRCC, the staff it allocates to reviewing the RCMP may have little experience and even less expertise reviewing an organization as notoriously difficult to review as the RCMP. NSIRA will, consequently, have fewer staff with limited or no experience or expertise reviewing the RCMP. It would not be practical to spend more resources training staff so NSIRA can review the RCMP's national security activities when it could just coordinate with the body already dedicated to reviewing the RCMP.²⁸

To prevent CRCC controlling what NSIRA reviews, avoid the duplication and unnecessary expenditure of resources, and to continue the same depth of review for the RCMP, CRCC should retain its ability to review issues and complaints related to national security for the RCMP. CRCC could relay its findings to NSIRA, to ensure that they have a whole-of-government approach to reviewing national security matters in Canada.

Coordination with provincial police accountability bodies

NSIRA is authorized to examine the national security and intelligence activities of federal departments, but not the provincial or municipal policing services that partner with federal agencies and departments. To ensure that NSIRA can “follow the thread,” and is fully aware of national security and intelligence activities, NSIRA should be allowed to cooperate with provincial police complaint bodies provided provincial jurisdiction is respected and provincial bodies agree to cooperate on an ad-hoc basis.

Conclusion

NSICOP and NSIRA have the potential to add considerable value to Canadian intelligence accountability by (1) reviewing Canadian ISAs and ensuring that they are efficient, effective, and responsive to changes in the security and intelligence environment; (2) promoting innovation in intelligence accountability by flagging and updating outdated legislation and providing feedback on intelligence practices, operations and methods; (3) setting standards for intelligence review and oversight; (4) identifying, analysing and reporting on emerging trends and potential pitfalls that will or that currently affect Canada's intelligence and security community; and (5) building public trust in Canadian ISAs.

Enhanced intelligence accountability will necessitate clarifying in Bill C-59 how and to what degree NSICOP and NSIRA will coordinate and collaborate with each other and existing accountability bodies. To prevent duplication of work and resources, NSIRA can help by familiarizing NSICOP with intelligence accountability and exploring areas of public interest. A modest secretariat, with the right staff and resources, can ensure that NSICOP is optimally informed without duplicating the work of other review bodies.

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NSIRA should also have the ability to coordinate with CRCC and provincial police complaint bodies to establish a whole-of-government awareness of Canadian intelligence and security. Coordination among accountability bodies will reduce the regulatory burden on ISAs if they avail themselves of existing internal mechanisms to enable review and oversight, act as liaisons, and offer information briefings for NSICOP and NSIRA. In implementing these reforms, NSICOP and NSIRA will ensure that Canadian intelligence accountability is aligned with the expectations of Canadians and is well-positioned to confront the rapidly changing environment of threats that Canada faces.

Among the key recommendations that we offer to improve security and intelligence accountability outlined in this commentary:

- NSICOP should have the ability to request support from NSIRA;
- CRCC for the RCMP should retain its ability to review issues and investigate complaints related to national security;
- NSIRA should coordinate with CRCC when reviewing issues that pertain to the RCMP;
- NSIRA should have the ability to coordinate and conduct joint investigations with provincial police complaint bodies;
- NSIRA should build on established standards for intelligence accountability to promote consistency in review;
- NSIRA should take reasonable steps to cooperate with the NSICOP to avoid duplication of work in fulfilling their respective mandates.

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Endnotes

- 1 Four previous attempts have been made to pass legislation that would establish a parliamentary committee or committee of parliamentarians who would have the ability to review classified information related to national security and defence: Bill C-81 was introduced by Anne McLellan, then the Minister for Public Safety and Emergency Preparedness in 2005, Bill C-447 and C-352 were introduced by Liberal MP Derek Lee in 2007 and 2009 respectively, Bill S-220 was introduced by Sen. Hugh Segal in 2014, and Bill C-622 was introduced by Liberal MP Joyce Murray also in 2014.
- 2 Of the 17 departments and agencies that make up Canada's federal security and intelligence community, only the Canadian Security Intelligence Service (CSIS), the Communications Security Establishment (CSE), and the Royal Canadian Mounted Police (RCMP) have thus far been subject to a permanent, independent, expert review.
- 3 The Commissioner would be responsible for reviewing and determining whether conclusions reached by the Ministers of National Defence or Public Safety are reasonable, and on the basis of which foreign intelligence authorizations, cyber security authorizations, and other forms of authorizations are issued or amended.
- 4 The Intelligence Commissioner, outlined in C-59, is an example of pre-emptive oversight because the Commissioner will approve ministerial authorisations before they can be enacted.
- 5 There is evidence of CSE taking undue time to respond to queries from Office of the CSE Commissioner (OCSEC). For example, in OCSEC's 2011-2012 Annual Report, the commissioner expressed frustration over undue delays with some reviews. However, OCSEC does not regularly call out CSE on taking too long to

respond to requests and the CSE Commissioner has never had to use subpoena powers; we thus surmise that delays are rare. There are rarely delays when CSIS shares information with SIRC.

- 6 It is unlikely that ISAs that have already been subject to external review would attempt to obstruct, since legislation gives NSICOP the power to call out uncooperative ISAs. However, there may be some growing pains with ISAs that have not previously been subject to outside review.
- 7 Appropriate ministers can refuse to give NSICOP information. NSIRA would, therefore, not be able to share information with the Committee which it had been refused. However, NSIRA, which has less restrictive access to information, could request the specified information and in the process assure NSICOP that it is looking into the matter. NSIRA will also be staffed by former members and staff of SIRC and, therefore, could use its expertise to assist NSIRA if it was inundated with information it did not have the resources to process.
- 8 Bill C-59 mandates that the members of SIRC, including the Chairman, will continue in office as members of the NSIRA. SIRC's staff will continue as part of the NSIRA's secretariat.
- 9 Another benefit of cooperating with NSIRA will be the agency's access to information. Unlike NSICOP, NSIRA will not have to rely solely on the ask-and-wait approach with every Canadian ISA. Similar to processes used for OCSEC and SIRC, it is likely that information NSIRA requests from CSE and CSIS will be identified and put into a database for their exclusive use. A similar process could also be adopted for information from other ISAs, once a rapport is established.. Furthermore, for the ISAs where NSIRA must ask and wait for information, NSIRA can apply tests to ensure that the agency is receiving all of the files on the issue it requested. Although NSIRA must be cognizant of provisions surrounding NSICOP's access to information, if NSICOP coordinated with NSIRA, the committee could avoid the selection bias that is a by-product of the ask-and-wait approach.
- 10 This includes control and coordination by the responsible Minister.
- 11 SIRC predominantly conducts review, but there is precedent of SIRC being briefed on select significant operations while they are on-going.
- 12 Accountability bodies can also review or oversee propriety. Propriety review focuses on issues that are not purely legal but are related to the law. For example, an accountability body reviewing for propriety could examine an intelligence activity that did not contravene the law, but may not have been "proper." Propriety is assessed by the inspectors general for Intelligence and Security in New Zealand and Australia.
- 13 NSIRA can build on the standards used by both OCSEC and SIRC, and adapt them for reviewing other ISAs.
- 14 The Privy Council, the National Security and Intelligence Advisor, and the Committee of Deputy Ministers coordinate on select issues. However, that is not their main focus. By contrast, NSIRA and NSICOP would have a dedicated remit along with more resources to look specifically at issues across Canada's intelligence and security community.
- 15 NSICOP is mandated to review the legislative, policy, regulatory, administrative, and financial framework for national security and intelligence and any activity carried out by a department that relates to national security or intelligence. In the most recent version of Bill C-59, NSIRA can review any activity carried out

by a department that relates to national security or intelligence, any activity carried out by CSE and CSIS, and review any matter related to national security or intelligence referred by a minister; consequently, both NSICOP and NSIRA could identify trends that span Canada's intelligence and security community.

- 16 Although opposition Parliamentarians could look into these issues, they must at the same time avoid using the information they collect for partisan purposes. Otherwise, they would politicize the review and undermine its effectiveness.
- 17 Only four NSICOP members have experience with national security or intelligence (CBC 2017): Vern White, Frances Lankin, Percy Downe, and Murray Rankin.
- 18 The Privy Council Office (PCO) is requesting \$2.2 million to establish NSICOP's secretariat. The \$2.2 million will cover set-up costs assumed by PCO, including accommodation, security, and information technology requirements, salary costs, and operating costs until NSICOP's secretariat receives appropriation (Evelyn 2017). The secretariat itself is proposing closer to \$2.3 million in appropriations to carry it through from December 2017 to March 2018, for a total of some \$4.5 million in start-up costs (Evelyn 2017).
- 19 NSIRA could offer workshops to NSICOP similar to those OCSEC has organized for new employees of review bodies to enhance the effectiveness of independent review (OCSEC, 2017). OCSEC has conducted four review workshops in the past seven years, and one could presume they will continue as required, and that it would also be open to staff of the NSICOP secretariat. The workshops were developed based on the principles and method of audit standards but tailored to review and intelligence by a former auditor principle of the OAG (who had also worked for a review body).
- 20 Bill C-59 amends the *RCMP Act* (1985) so that CRCC will not have jurisdiction to conduct a review of an activity that is related to national security. The commission will refer to NSIRA any matter related to national security arising from a request for a review under section 45.34 or 45.35 of the *RCMP Act* (1985).
- 21 Bill C-59 amends the *RCMP Act* (1985) so that CRCC must refuse to deal with a complaint concerning an activity that is closely related to national security and shall refer such a complaint to NSIRA.
- 22 The RCMP might actually end up being reviewed by three independent bodies if the government were to create the Canada Law Enforcement Review Commission (CLERC) as proposed by former Clerk of the Privy Council Mel Cappe in a report for Public Safety Canada (Canadian Press 2018). CLERC would review both the Canada Border Services Agency (CBSA) and the RCMP. CLERC would assume some of the responsibilities of the CRCC, including the ability to review the RCMP's policies and the actions of RCMP members, and initiate reviews (Canadian Press 2018). Although an argument might be made for an agency to review the CBSA's law enforcement activities, the case for including the RCMP is controversial: In his earlier report, Justice O'Connor defends a contrarian position – that the RCMP should not be reviewed by two (let alone three) agencies.
- 23 O'Connor (2006) also noted that as a law enforcement agency, because the RCMP's national security activities are different from those of most other national security actors, it may be advantageous to have an accountability body dedicated to reviewing the RCMP rather than an accountability body reviewing only a small part the RCMP's activities.
- 24 There are some issues that could be closely related to national security, and therefore fall under the remit of NSIRA, and also closely related to the conduct of RCMP members, which would fall under the remit of CRCC.

- 25 NSIRA and CRCC could coordinate on the complaints and reviews handled by NSIRA. However, considering the drawbacks of two review bodies for the RCMP, and the fact that NSIRA will be also responsible for reviewing 16 other agencies, CRCC should retain the ability to review all of the RCMP's national security activities. Although NSIRA will not be reviewing the RCMP directly, the agency can and should coordinate with CRCC to be fully aware of Canadian intelligence and security activities.
- 26 Staffing for NSIRA may roll out in stages to make it easier to recruit, train and integrate new staff.
- 27 This number is composed of the entire Operations Sections which includes CRCC's Complaints and Research staff.
- 28 This argument could also be used to retain OCSEC. Similar to CRCC, OCSEC has an experienced staff with expertise in intelligence. However, the government has already decided that NSIRA will assume the bulk of OCSEC's current responsibilities. Considering that the government has decided to retain CRCC, the experience and expertise of its staff should be maximized.



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