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REPORT OF THE INTERIM COMMITTEE OF PARLIAMENTARIANS ON NATIONAL SECURITY

An advisory committee composed of Members of the House
of Commons and the Senate

At the request of the Deputy Prime Minister
and Minister of Public Safety and Emergency Preparedness

May 2004 – October 2004

INTERIM COMMITTEE OF PARLIAMENTARIANS ON NATIONAL SECURITY

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VICE-CHAIR

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**INTERIM COMMITTEE OF
PARLIAMENTARIANS ON
NATIONAL SECURITY**



**COMITÉ INTÉrimAIRE DE
PARLEMENTAIRES SUR LA
SÉCURITÉ NATIONALE**

Ottawa, Ontario K1A 0A9
4 October 2004

The Honourable Anne McLellan
Deputy Prime Minister and
Minister of Public Safety and Emergency Preparedness
55 Metcalfe Street, 15th Floor
Ottawa, Ontario
K1A 0A3

RE: The creation of a Parliamentary Intelligence Committee

Dear Ms. McLellan:

We are pleased to provide you with the report of the Interim Committee of Parliamentarians on National Security. All parties and both Houses of Parliament are represented on this committee.

In December 2003, the Prime Minister announced a number of democratic reforms designed to better engage Canadians in the democratic process and "restore Parliament as the center of decision-making ...". Included in these reforms, and later reiterated in your announcement of March 31, 2004, was the recommendation to establish a mechanism through which Parliament could provide more active scrutiny of security and intelligence. On May 13, 2004, the Honourable Jacques Saada, the then-Government House Leader, announced the creation of our interim committee. These initiatives by the Government, and our report, are the first steps in the process of responding to the commitments of the Prime Minister.

This letter serves as the executive summary of our report which is attached and which is accompanied by annexes that add background information. The report contains sufficient detail and rationale to assist in drafting the legislation that will be necessary to implement our recommendations.

Our committee met with legislators, oversight bodies, security and intelligence agencies, and academics in Canada and abroad (see Annex A). We visited Australia, the United Kingdom and the United States. We gathered a great deal of useful information and very much appreciated the candour of our hosts and witnesses. We also benefited greatly from the invaluable assistance of departmental officials in Ottawa and our diplomatic representatives abroad. While we are fortunate to be able to build upon the experiences of our allies and others, what we recommend is a "made in Canada" approach.

We are of the view that this approach should provide wide-ranging scrutiny of all present and future agencies, departments and review bodies in the intelligence community.

The security and intelligence community in Canada includes those departments and agencies having a mandate to collect, retain and analyze information, and advise the government; it is hereinafter referred to as the "intelligence community." It also includes those bodies which review its activities. It employs thousands of people, expends hundreds of millions of dollars annually, and is subject to only very limited parliamentary scrutiny (see Annex B).

Parliamentary scrutiny of intelligence functions has been raised as an issue with every evolution of the intelligence community since the MacDonald Commission in 1981 (see Annex C). Parliament currently receives only expurgated reports from review agencies. Otherwise, its role is limited to two committees which do not normally have access to classified information: the House of Commons' Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness Subcommittee on National Security; and the Senate's Standing Committee on National Security and Defence.

Today, Canadians are more concerned than ever before with issues of national security. Since the events of September 2001, there has been a substantial expansion in the breadth and intensity of Canada's counter-terrorism efforts. The Canadian Security Intelligence Service has been joined by the Royal Canadian Mounted Police and several other agencies and departments in these activities. The creation of Integrated National Security Enforcement Teams (INSETS) across the country should be of particular note. We agree with the Prime Minister that the status quo of parliamentary scrutiny is no longer adequate. To allow more effective parliamentary scrutiny of the intelligence community, Parliament will require that some of its number have complete access to such classified information as they consider appropriate for their inquiries in a fashion similar to that which is provided to the Security Intelligence Review Committee in Section 39(2) of the *Canadian Security Intelligence Service Act* (see Annex E). We recognize that this is a significant departure from current Canadian practice but believe it is necessary to ensure that Parliament can undertake comprehensive and independent scrutiny of this important area. Though this arguably goes further than the legislation enacted by some of our allies, it is in line with developing practice.

Some of the jurisdictions we visited initially enacted legislation that was less ambitious than what we envision for Canada. However, because of the trust that has evolved since the passage of that legislation, their oversight committees' access has exceeded the level that was originally envisaged. Their systems have evolved over time to become more effective. We strongly believe that a structure which must rely on the gradual evolution and expansion of access, powers, and remit would be inappropriate for Canada. We realize nevertheless that the establishment of confidence between the intelligence community and the committee will be essential to the success of parliamentary scrutiny of intelligence functions.

We also recognize that such access without appropriate safeguards could have a negative impact on Canada's security, and on relationships with our allies. Such safeguards should include permanently assigned and security-cleared staff, secure premises, and committee members who are selected based upon their suitability for the position and who are sworn to secrecy. Experience suggests that the Privy Council oath is an option that would suffice. Our committee accepts that access to classified information will limit a committee member's capacity to speak publicly. We believe, however, that parliamentarians will find an appropriate balance between the rights and responsibilities of their office, and the requirement to protect national security; as has apparently been achieved by their counterparts abroad.

We believe that closer parliamentary scrutiny will better assure Canadians that a proper balance is being maintained between respect for their rights and freedoms, and the protection of national security. The intelligence community will be more accountable to Parliament and, by extension, to the people of Canada. This closer scrutiny will also better assure the efficacy and efficiency of the intelligence community by thoroughly examining its roles and responsibilities.

The level of parliamentary scrutiny that we envisage would be thorough and comprehensive. It will add to the intelligence community's workload. Because of this we believe that a defined relationship with present and future review agencies will be required. This will include a process whereby they report to Parliament through the structure we are proposing. We are also adamant that this process, or any other facet of such parliamentary scrutiny of intelligence, shall not derogate from Parliament's privilege to send for papers, people and records, or diminish the role and authority of any other parliamentary committee.

To establish and maintain the confidence of both chambers of Parliament and the trust of Canadians, Parliament's role in this area must be, and be seen to be, independent of the Executive (Cabinet).

There were several views as to what committee structure would be most effective for parliamentary scrutiny of intelligence functions. Three options found substantial support from the members of the interim committee: Structure 1, creating two permanent committees of Parliament; Structure 2, creating a traditional joint committee of Parliament; and Structure 3, creating an innovative form of joint committee with modified membership, rules and procedures.

Based on preferential balloting of the eight members present at our final session, Structure 3 garnered the most support. We therefore recommend the creation of a Parliamentary Intelligence Committee in the form of an innovative joint committee of Parliament. That said, we would be remiss if we were not to highlight the fact that there are advantages to each of the structures:

- *Structure 1.* Creating two permanent committees is reflective of the bicameral nature of Parliament and builds on the strengths, structures, cultures, and management practices that exist in each Chamber. Given the size and complexity of the intelligence community, it is important to recognize the natural limit on any one committee of Parliament's ability to provide scrutiny: a typical committee can normally only undertake two major studies a year. Two committees would, at least, double that number to four. The existence of two committees would further permit one committee to dedicate itself to a single study for a longer period. While two committees provide a practical division of labour, it need not preclude their working together when appropriate. Over time a dynamic between the two committees would emerge that would minimize the likelihood of overlap or duplication. Previous experience of parliamentary committees also supports a two committee structure. In other important areas such as Agriculture, Trade, and Defence both chambers operate their own committees. Furthermore some of our members who have joint committee experience have found that, with the exception of the Standing Joint Committee for the Scrutiny of Regulations, joint committees have not functioned well. Lastly, while it has been suggested that the multiple perspectives which two committees would bring to Parliament could be counterproductive, the plurality of opinions offered by two committees could also serve to better inform Parliament and aid the Government's decision-making process by providing it with more policy options.
- *Structure 2.* Creating a traditional joint committee of Parliament — a structure which like most traditional joint committees includes co-Chairs and co-Vice Chairs along with proportional membership from both chambers and among all parties— would allow Parliament to set aside differences between the chambers and work together in the public interest to tackle an issue of obviously non-partisan, national significance. A traditional joint committee would foster an environment wherein a single parliamentary perspective on intelligence matters could develop and in time become a single destination that the Government of Canada and Canadians could approach for consultation. Through the participation of both chambers, a traditional joint committee would ensure continuity of the committee's efforts and provide for the cross-fertilization of perspective and expertise. It would provide increased parliamentary scrutiny while minimizing the demands on financial, physical and human resources that will be placed on Parliament and the intelligence community. Separate structures for the House and the Senate would necessitate at the very least separate research and administrative staffs, whereas one joint committee would enjoy structural economies. Similarly, a single committee would reduce the numbers of briefings and documents requested of the departments and agencies in the intelligence community. On top of these advantages, this structure also has the advantage of being well-known to Parliament. It more accurately reflects the

distribution of membership within Parliament and ensures that Canada's elected members of Parliament represent a majority of those on the committee.

- *Structure 3.* As selected by us in a preferential ballot, creating an innovative joint committee of Parliament — one with co-Chairs and co-Vice Chairs like a traditional joint committee but with equal representation of members from the House of Commons and the Senate — would build on many of the advantages of a traditional joint committee and emphasize certain qualities of the Senate which would contribute to the committee's future success. Drawing members from both chambers of Parliament on a single committee would again demonstrate as in Structure 2 that Parliament has come together on a matter of obvious national significance and provide for the cross-fertilization of perspective and expertise. It also has the same advantages of achieving meaningful economies in terms of keeping costs low and minimizing the burden on the intelligence community. An innovative joint committee would, however, do more than a traditional joint committee to ensure the continuity of the committee's efforts and to retain significant corporate memory (because of the more permanent tenure of members of the Senate). It would also be better positioned to work through prorogations and dissolutions than a traditional joint committee. As well, Senators are able to dedicate more time to committees than members of the Commons because they do not have the same constituency obligations. Providing for a greater proportion of Senate membership would help to foster the collegial, non-partisan atmosphere necessary for the committee's eventual success, and, together with adoption of many of the more collegial Senate Rules of Procedure, better allow it to follow issues to their logical conclusion.

We are of the view that the unique nature of the intelligence community and the nature of the modern threats facing Canada necessitates that the committee be able to meet as required. The committee will need to be established by statute, so as to provide operational flexibility, adequate funding for secure facilities and staff, as well as the capacity to continue in existence through prorogations and the dissolution of Parliament. Establishment by statute would also provide for access to and the protection of classified information.

We believe that the proposed committee should be a committee of Parliament, not a committee of parliamentarians. Members of the committee will continue to enjoy the same parliamentary privilege as their peers. We acknowledge that there are probably significant parliamentary procedural and privilege issues that need to be resolved by procedural experts and legislative drafters, but we also believe that none of these need be insuperable given the importance of the issue at hand.

We recommend that members should be appointed to the committee by the Prime Minister for a term that continues until the constitution of a new committee at the commencement of the next Parliament. When appointing a member of an opposition party, the Prime Minister should seek the concurrence of that member's party leader.

Appointing the right parliamentarians to this committee is crucial to its success. We recommend that the Prime Minister, when considering prospective members, take into account their personal characteristics; their knowledge of security and intelligence issues; and their capacity to work in a non-partisan way. To ensure its independence, members of the Cabinet, Parliamentary Secretaries, Party Whips and House and Senate Officers should be ineligible for appointment to the committee.

Based on the experiences of others, we are of the opinion that the workload for committee members will be onerous, particularly for the Chairs. Despite this, we recommend that the members remain eligible for full participation on other committees.

Consistent with recent changes in the House of Commons, committee leadership positions should be elected by a secret ballot of its members to enhance the reality, and perception, of committee independence.

The effectiveness of parliamentary scrutiny of intelligence will hinge, in part, on the commitment of sufficient resources which, we believe, will be approximately \$3 million annually (see Annex D). This figure is consistent with existing oversight budgets in Canada and the United States. In Canada, for example, the Security Intelligence Review Committee and the Office of Communications Security Establishment Commissioner have budgets of approximately \$2.47 million and \$902,000 respectively. Their mandates are agency-specific, whereas parliamentary scrutiny would have a broader mandate, and would therefore require additional resources.

We believe that properly discharging Parliament's role in this important area will include start-up and ongoing costs that will exceed the financial expenditures of other committees established by Parliament. Assuming the provision of secure facilities, the additional costs that will be incurred on an annual basis will be attributable to the nature of the mandate, the number of permanent staff that could be required, and the need to maintain the security of information. To provide anything less than this level of support would undermine the effectiveness of the committee's work. Without this commitment we question whether effective parliamentary scrutiny of the intelligence community can be achieved.

We believe that it would be useful for this report to be tabled in both the House of Commons and the Senate, as a public document for future reference, on an appropriate occasion after the October 4th, 2004 recall of Parliament.

We would appreciate an opportunity to discuss our report with you. Once you have had time to arrive at some preliminary conclusions, the members of our committee have asked us to assure you that they would be willing to address any further issues you may wish to raise.

Respectfully submitted,

Derek Lee

Mr. Derek Lee, M.P.
Chair

Colin Kenny

The Honourable Colin Kenny, Senator
Vice-Chair

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NOTE OF SPECIAL THANKS

The interim committee undertook a large and complex task at a swift pace. In addition to the contribution of the staff highlighted above, we could not have returned our report so promptly without significant contributions from the staff of our member's offices, Embassy and High Commission staff overseas, the Library of Parliament and the Privy Council Office; we wish to acknowledge specifically, Greg Brand, Grant Dawson, Ariel Delouya, Dennis Horak, Veronica Morris, and Judy Robertson. Further, the production and editorial services of the House of Commons Publications Service and the dedication of the Translation Bureau were instrumental in putting together the report that follows.

REPORT OF THE INTERIM COMMITTEE OF PARLIAMENTARIANS ON NATIONAL SECURITY

This report is structured so as to illustrate the outcomes we would seek from legislation establishing a Parliamentary Intelligence Committee. It also provides a short rationale where appropriate and contains five appendices with additional background and contextual information.

PREAMBLE

The legislation establishing the Parliamentary Intelligence Committee should have as its goal to assure parliamentarians and, by extension, all Canadians that the intelligence community is:

- (a) effectively serving Canada and Canadian interests; while
- (b) respecting the Canadian Charter of Rights and Freedoms; and, is
- (c) fiscally responsible, properly organized and managed.

MANDATE

The committee will have the authority to scrutinize the intelligence community in pursuance of the above goals. The intelligence community includes all present and future departments, agencies and review bodies, civilian and military, involved in the collection, analysis, and dissemination of intelligence, for the purpose of Canada's national security.

Given the highly inter-related system of departments and agencies within the intelligence community, effective scrutiny requires a broad mandate that is inclusive of the entire intelligence community.

This committee will, inter alia, require the authority to:

- (a) make inquiries;
- (b) review the priorities, capabilities, assets, and products of the Canadian intelligence community;
- (c) review organizational and strategic changes within the intelligence community, including the review of the appointment of senior

officials in conformity with the practice of other committees of Parliament;

- (d) on its own initiative, or pursuant to a request from a Minister, inquire into any particular activity or incident within its purview;
- (e) review government intelligence priorities, detailed intelligence requirements and any other directions to the intelligence community; and
- (f) request the assistance of, and receive unexpurgated reports from, present and future review agencies.

Experience with the Security Intelligence Review Committee and the Office of the Communications Security Establishment Commissioner has shown that such powers are necessary for effective review of the intelligence community. The powers specified above are equivalent to those already exercised by the review agencies, and are required by the committee if it is to fulfill its mandate. Anything less would render parliamentary scrutiny ineffective.

It is envisaged that the existing review agencies would continue to operate after the establishment of the Parliamentary Intelligence Committee. We note that the Security Intelligence Review Committee also has a second role. It handles complaints about Canadian Security Intelligence Service activities from the public and security clearance appeals from employees of government departments and agencies. We expect that it would continue to do so. All present and future review bodies will continue to report to Parliament through their ministers but would find in the Parliamentary Intelligence Committee their principal interlocutor in Parliament. The Parliamentary Intelligence Committee should be the forum for the consideration of unexpurgated reports from all present and future review bodies. We expect that they will keep the Parliamentary Intelligence Committee fully informed of their activities, and will provide a detailed listing of all operational plans, documents and reports. The Parliamentary Intelligence Committee may require the production of specific documents.

The committee will also require the authority to:

- (a) review the funding levels requested for intelligence purposes by the Government;
- (b) recommend to the Government increases or decreases in the general expenditure levels provided to the departments and agencies concerned;
- (c) develop and maintain relationships with the legislative branches of Canada's allies in the field of intelligence matters;
- (d) engage experts and consultants as required;

(e) develop its own procedural rules, including, but not limited to:

- (i) the creation of subcommittees where necessary; and
- (ii) the ability to travel in accordance with its responsibilities, and within its budget.

The authorities listed above are generally consistent with those enjoyed by Canadian review agencies and those exercised by legislative review bodies in allied countries. For the most part they are essential to the establishment of independent, and therefore credible, parliamentary scrutiny of the intelligence community. Having this authority would allow the committee to more rapidly become expert in this complex and rapidly evolving area and be better able to serve Parliament.

ACCESS TO CLASSIFIED INFORMATION

The committee will have the same right of unfettered access to information held by the intelligence community as the Security Intelligence Review Committee and the Inspector General now have with respect to the Canadian Security Intelligence Service.

Without full access to the information, the Parliamentary Intelligence Committee will not be in a position to fully comprehend the nature and extent of the activities conducted by the intelligence community. It would then be unable to fulfill its mandate, comment constructively on the intelligence community, or have credibility with Canadians.

MANAGING THE REQUIREMENT FOR SECRECY

Access to, and retention of, classified information will be in accordance with the Government Security Policy.

Members of the proposed committee shall swear an oath of secrecy similar to that found in the schedule to the *Canadian Security Intelligence Service Act* (R.S.C. 1985, c.C-23) and/or the Oath of a Privy Councillor.

All staff must obtain security clearances in accordance with the Government Security Policy.

The Parliamentary Intelligence Committee shall operate in secure premises, and use communications procedures in accordance with standards set by the Government Security Policy.

The committee shall respect the caveats and rules governing access to classified information shared between allied agencies and others.

The committee, its members and staff shall retain classified information in conformity with government standards.

The committee shall make reports directly to Parliament only after consultation with the Government to ensure that no classified information is disclosed. The Government shall have the right to review the committee's reports before they are tabled in Parliament, and to black out, but not edit or delete, such classified information as it deems necessary. The committee will also respect its obligations with regard to the disclosure of personal information as required by the *Privacy Act*.

It is absolutely essential that our intelligence community and those of our allies have confidence in the security procedures put in place for any system of parliamentary scrutiny. This includes secure facilities, secure communications, cleared staff, and proper mechanisms to ensure the security of classified information in accordance with current Canadian standards.

COMMITTEE REPORTS

The committee shall report to Parliament annually and when appropriate in accordance with its mandate.

A STATUTORY BASIS IN A PARLIAMENTARY CONTEXT

The duties and functions of the Parliamentary Intelligence Committee will be carried out within the institution of Parliament. The Parliamentary Intelligence Committee and its members will enjoy the rights, powers, privileges and immunities of Parliament constrained only by the undertakings inherent in the swearing of the oath(s).

The committee will be established within the *Parliament of Canada Act* by statute. The statute will provide for adequate funding and the capacity to continue in existence through prorogations and the dissolution of Parliament, in the same manner as the Board of Internal Economy in the House of Commons and the Committee of Internal Economy in the Senate. With the exception of the oaths required, nothing in the statute shall derogate in any way from parliamentary privilege.

As noted above, there are committees of Parliament set up in the *Parliament of Canada Act*. We are of the opinion that this committee would need to be established in a similar fashion so as to balance the requirement for secrecy, the protections afforded by parliamentary privilege, and the need to create independent scrutiny of the intelligence community.

TERM OF THE COMMITTEE

The committee will continue to meet as it deems necessary through prorogation or dissolution of Parliament, as though there had been no prorogation or dissolution. Members of the Committee, while eligible, will continue their membership, until the members of a successor committee are appointed.

The unpredictability of national security developments necessitates that the committee's staff and facilities must continue to function irrespective of Canada's electoral cycle. Sensitive and urgent matters might arise that demand Parliament's attention, and the committee should have the capacity to meet, conduct inquiries, examine witnesses, and report in such special circumstances.

FUNDING THE COMMITTEE'S WORK

Prior to each fiscal year the Parliamentary Intelligence Committee shall cause to be prepared an estimate of the sums that will be required to be provided by Parliament for the payment of its charges and expenses during that fiscal year. The Speakers of the two Houses of Parliament, upon receipt of the estimates from the Co-Chairs of the Parliamentary Intelligence Committee, would then transmit them to the President of the Treasury Board who shall lay them before the House of Commons with the estimates of the Government for the fiscal year. The Leader, or Deputy Leader, of the Government in the Senate would table the Parliamentary Intelligence Committee's estimate in the Senate in a fashion consistent with current practice.

We believe that the Parliamentary Intelligence Committee requires a different funding mechanism than that used by traditional parliamentary committees. The magnitude of the committee's budget will be such that it would distort the traditional processes in practice for funding committees of the House and Senate through their respective Board and Committee of Internal Economy.

The Parliamentary Intelligence Committee will require financial expenditures that exceed those of other committees established by Parliament because of the staffing and processes required to protect sensitive information (see Annex D).

Given the nature and scope of the Parliamentary Intelligence Committee's mandate, it might not be in a position to fully explain its funding requirements in the same way as traditional committees because of the requirement for secrecy that might come into play.

COMMITTEE PROCEDURES

The legislation establishing this committee must allow it to:

- (a) meet in closed session or open session in accordance with the Government Security Policy;
- (b) operate secure facilities, communications and document handling;

(c) manage its own staff; and

(d) foster a collegial, non-partisan, atmosphere.

The handling and control of classified information and testimony, the requirement for non-partisanship, and the need to pursue lines of inquiry to their logical conclusion require a set of rules devised for this purpose.

The sensitive nature of the work to be conducted by the committee will require closed sessions. This practice has been successfully adopted by other legislative bodies in the US, U.K., and Australia.

COMMITTEE STRUCTURE

There were several views as to what committee structure would be most effective for parliamentary scrutiny of intelligence functions. Three options found substantial support from the members of the interim committee: Structure 1, creating two permanent committees of Parliament; Structure 2, creating a traditional joint committee of Parliament; and Structure 3, creating an innovative form of joint committee with modified membership, rules and procedures.

Based on preferential balloting of the eight members present at our final session, Structure Three garnered the most support. We therefore recommend the creation of a Parliamentary Intelligence Committee in the form of an innovative joint committee of Parliament. That said, we would be remiss if we were not to highlight the fact that there are advantages to each of the structures:

- *Structure 1.* Creating two permanent committees is reflective of the bicameral nature of Parliament and builds on the strengths, structures, cultures, and management practices that exist in each Chamber. Given the size and complexity of the intelligence community, it is important to recognize the natural limit on any one committee of Parliament's ability to provide scrutiny: a typical committee can normally only undertake two major studies a year. Two committees would, at least, double that number to four. The existence of two committees would further permit one committee to dedicate itself to a single study for a longer period. While two committees provide a practical division of labour, it need not preclude their working together when appropriate. Over time a dynamic between the two committees would emerge that would minimize the likelihood of overlap or duplication. Previous experience of parliamentary committees also supports a two committee structure. In other important areas such as Agriculture, Trade, and Defence both chambers operate their own committees. Furthermore some of our members who have joint committee experience have found that, with the exception of the Standing Joint Committee for the Scrutiny of Regulations, joint committees have not functioned well. Lastly, while it has been suggested that the multiple perspectives which two committees would bring to Parliament could be counterproductive, the plurality of opinions offered by two committees could also serve to better inform Parliament and aid the Government's decision-making process by providing it with more policy options.

- *Structure 2.* Creating a traditional joint committee of Parliament — a structure which like most traditional joint committees includes co-Chairs and Co-Vice Chairs along with proportional membership from both chambers and among all parties — would allow Parliament to set aside differences between the chambers and work together in the public interest to tackle an issue of obviously non-partisan, national significance. A traditional joint committee would foster an environment wherein a single parliamentary perspective on intelligence matters could develop and in time become a single destination that the Government of Canada and Canadians could approach for consultation. Through the participation of both chambers, a traditional joint committee would ensure continuity of the committee's efforts and provide for the cross-fertilization of perspective and expertise. It would provide increased parliamentary scrutiny while minimizing the demands on financial, physical and human resources that will be placed on Parliament and the intelligence community. Separate structures for the House and the Senate would necessitate at the very least separate research and administrative staffs, whereas one joint committee would enjoy structural economies. Similarly, a single committee would reduce the numbers of briefings and documents requested of the departments and agencies in the intelligence community. On top of these advantages, this structure also has the advantage of being well-known to Parliament. It more accurately reflects the distribution of membership within Parliament and ensures that Canada's elected members of Parliament represent a majority of those on the committee.
- *Structure 3.* As selected by us in a preferential ballot, creating an innovative joint committee of Parliament — one with co-Chairs and co-Vice Chairs like a traditional joint committee but with equal representation of members from the House of Commons and the Senate — would build on many of the advantages of a traditional joint committee and emphasize certain qualities of the Senate which would contribute to the committee's future success. Drawing members from both chambers of Parliament on a single committee would again demonstrate as in Structure 2 that Parliament has come together on a matter of obvious national significance and provide for the cross-fertilization of perspective and expertise. It also has the same advantages of achieving meaningful economies in terms of keeping costs low and minimizing the burden on the intelligence community. An innovative joint committee would, however, do more than a traditional joint committee to ensure the continuity of the committee's efforts and to retain significant corporate memory (because of the more permanent tenure of members of the Senate). It would also be better positioned to work through prorogations and dissolutions than a traditional joint committee. As well, Senators are able to dedicate more time to committees than members of the Commons because they do not have the same constituency obligations. Providing for a greater proportion of Senate membership would help to foster the collegial, non-partisan, atmosphere necessary for the committee's eventual success, and, together with adoption of many of the more collegial Senate Rules of Procedure, better allow it to follow issues to their logical conclusion.

COMMITTEE MEMBERSHIP

The Prime Minister will appoint members to the committee. When appointing a member from an opposition party, the Prime Minister will require the concurrence of the leader of that Party.

The Prime Minister has responsibility for Canada's national security and the protection of classified information and must therefore have confidence in the members appointed to a body which will have access to such information and who may be appointed to the Privy Council.

Personal suitability, experience in matters of national security, the ability to serve for an extended period of time, and the ability to work in a non-partisan way, should be among the criteria considered by the Prime Minister in the appointment of members.

Members will not hold any Cabinet office or parliamentary appointment.

The committee and its members must be, and be seen to be, independent.

Members will remain eligible for full participation on other committees.

The nature and extent of the committee's mandate will necessitate that the majority of work be conducted in closed session and on secure premises. This workload will be onerous, and will make with considerable demands on members' time. Notwithstanding these commitments and normal parliamentary time constraints, there would be clear advantages in members participating on other committees of Parliament. Other committee work would better bring outside points of view into committee discussions, and would provide other committees with some insight into the work of the Parliamentary Intelligence Committee.

Membership on a single innovative joint committee of Parliament will be limited to eight parliamentarians, four from the House of Commons, and four from the Senate. A quorum to hear evidence will consist of three members, two of whom will be members of the Governing Party. A quorum of six members will be required for reporting. The other structures described in the section above might require an adjustment in their membership composition.

Members would continue to serve on the committee as long as they remain members of Parliament, until they resign from the committee, or until they are removed from the committee by resolution of their House. Subject to the above, members will serve for the life of a Parliament, through prorogation(s) and dissolution, until they are replaced by members from the next Parliament.

Members of the committee will serve during good behaviour but may be removed for cause by a vote of their respective chambers, after seven sitting days notice. To be carried, this vote will need to be supported by a majority of those members of both the Governing Party and the Official Opposition in their chamber at the time of the vote.

No substitution of members will be allowed on the committee. No parliamentarian may serve as an *ex officio* member of the proposed committee (see Senate Rule # 87).

Stability of membership on the committee is important for three reasons. First, it will take time to gain the trust of the intelligence community and our allies. Second, expertise in this complex area only comes with experience. Third, a member's independence will be crucial to the committee's success. Therefore any decision to remove a member should be subject to rigorous, transparent and non-partisan processes.

Members would be eligible for reappointment.

Committee leadership positions will be selected through a secret ballot of the members as is consistent with existing practice in the House of Commons.

The interim committee notes that the practice in the United Kingdom is for the Prime Minister to appoint the Chair of the Intelligence Security Committee. Chairs of legislative intelligence oversight committees are elected in Australia and the United States.

Remuneration for the Co-Chairs and Vice-Chairs of the committee will be the same as that provided to similar positions in both Houses.

Any vacancies should be filled forthwith.

The committee's workload and the timeliness of its inquiries require that seats on the committee do not stand vacant.

COMMITTEE STAFF AND FACILITIES

The committee will have a permanent, security-cleared, professional staff, with a capacity for advisory, analytical, investigatory, and administrative work.

Staff of the committee will be responsible for daily interactions and the maintenance of relationships with the departments and agencies of the intelligence community. This workload will be considerable, both in the management of information received and the preparation of documents for the committee.

An adequate staff complement is necessary to maintain a manageable workload for members of the committee. The committee's staff will be larger than the staff complement of traditional parliamentary committees.

The staff of the committee will be appointed and engaged by, and report to, the committee.

It is expected that the day-to-day management of the staff and operations of the committee will be the responsibility of an individual appointed by, and directly responsible, to the committee through the Co-Chairs.

The committee will be able to authorize secondments and exchanges of staff with the intelligence community.

Such staff secondments could be valuable to the committee, especially in its formative years.

The legislation establishing the Parliamentary Intelligence Committee should provide it with secure facilities and communications in accordance with government standards.

Secure facilities and communications systems will be required to safeguard the classified information received and retained by the committee.

ANNEX A

LIST OF WITNESSES

Associations and Individuals	Date	Meeting
Privy Council Office Rob Wright, National Security Advisor to the Prime Minister and Associate Secretary	27/07/04	2
Public Safety and Emergency Preparedness Canada Michel D'Avignon, Director General		
Canadian Security Intelligence Service Dale Neufeld, Acting Director		
Department of National Defence Keith Coulter, Chief, Communications Security Establishment MGen Michel Gauthier, J2/Director General, Intelligence	28/07/04	3
Office of the Inspector General of the Canadian Security Intelligence Service Eva Plunkett, Inspector General Arnold Zeman, Assistant Inspector General	08/07/04	5
Office of the Communication Security Establishment Commissioner Rt Hon Antonio Lamer, Commissioner Joanne Weeks, Executive Director		
Security Intelligence Review Committee Susan Pollack, Executive Director Tim Farr, Deputy Executive Director		
As Individuals Hon Ronald Atkey, P.C., Q.C. Hon Jean-Jacques Blais, P.C., Q.C.		
The Canadian Civil Liberties Association A. Alan Borovoy, General Counsel	09/09/04	6

LIST OF INDIVIDUALS WHO MET WITH THE COMMITTEE

UNITED STATES OF AMERICA (WASHINGTON DC)

July 21-22, 2004

Embassy of Canada

Michael Kergin, Ambassador
Ariel Delouya, Minister-Counsellor
Robert Sinclair, First Secretary

United States Senate, Senate Select Committee on Intelligence

Pat Roberts, Senator, Chairman
John D. Rockefeller, IV, Senator, Vice Chairman
Bill Duhnke, Staff Director
Richard Douglas, Majority Counsel

United States House of Representatives, House Permanent Select Committee on Intelligence

Porter Goss, M.C., (Florida), Chairman
Alcee Hastings, M.C., (Florida)
Merrell Moorhead, Deputy Staff Director
Marcel Lettre, Professional staff

The Henry L. Stimson Center

Ellen Lalpison, President and CEO
Emil El-Hokayem, Research Associate

President's Foreign Intelligence Advisory Board

Joan Dempsey, Executive Director
Nate Cash
John McLaughlin

AUSTRALIA (CANBERRA)

August 10, 2004

Canadian High Commission

Gaston Barban, Acting High Commissioner
Catherine Trinder, Assistant, General Relations Branch

Office of the Inspector General of Intelligence Security

Ian Carnell, Inspector General of Intelligence Security

Australian Secret Intelligence Agency

David Irvine, Director General

August 11, 2004

Office of National Assessments

Peter Varghese, Director General

Defence Intelligence Agencies

Stephen Merchant, Director, Defence Signals Directorate

Ian McKenzie, Director, Defence Imagery and Geospatial Organisation

Frank Lewincamp, Director, Defence Intelligence Organisation

Attorney General

Hon Philip Ruddock MP

August 12, 2004

Australian Security Intelligence Organisation

Dennis Richardson, Director General

Ian Cousins

Jim Neely

Margaret Hurley

Hamish Hutchinson

Foreign Minister

Hon Alexander Downer, MP

Parliamentary Joint Committee on ASIO, ASIS and DSD

Hon David Jull, MP

Senator Sandy Macdonald

Senator Alan Ferguson

Senator the Hon Robert Ray

Hon Kim Beazley MP

Mr. Stewart McArthur MP

Hon Leo McLeay MP

Parliamentary Presiding Officers

Senator the Hon Paul Calvert, President of the Senate

Hon Neil Andrew MP

UNITED KINGDOM (LONDON)

September 13, 2004

Canadian High Commission

Mel Cappe, High Commissioner

Ron Hoffmann, Minister (Political Affairs)

Joint Intelligence Committee

William Ehrman, Chairman

Jonathon Brewer, Secretary

High Commission Intelligence Liaison Staff

Dennis Horak, Intelligence, Liaison Officer

Rick Sauvé, RCMP

Liz Snow, Immigration Control and Security Section

Lena Kerr, Senior Canadian Liaison Officer GCHQ

September 13, 2004

Security and Intelligence Service

Ian Mathewson, Director

Nick Fishwick, Secretary to the Management Board

Matt Blair, Liaison

September 14, 2004

Security and Intelligence Coordinator

Sir David Ormand

Intelligence and Security Committee

Rt Hon Ann Taylor, MP, Chair

Rt Hon the Lord Peter Archer of Sandwell, QC, MP

Rt Hon Kevin Barron, MP

Rt Hon Joyce Quin, MP

Rt Hon Gavin Strang, MP

Rt Hon Alan Howarth, CBE, MP (Meet informally September 13)

Alistair Corbett, Clerk

British Security Service

Eliza Manningham Buller, Director General

Home Affairs Committee

Rt Hon John Denham, MP, Chair

Dr. Robin James, Clerk

September 15, 2004

Foreign Affairs Committee

Rt Hon Donald Anderson, MP, Chair

Sir John Stanley, MP

David Chidgey, MP

Lunch/roundtable UK intelligence academics

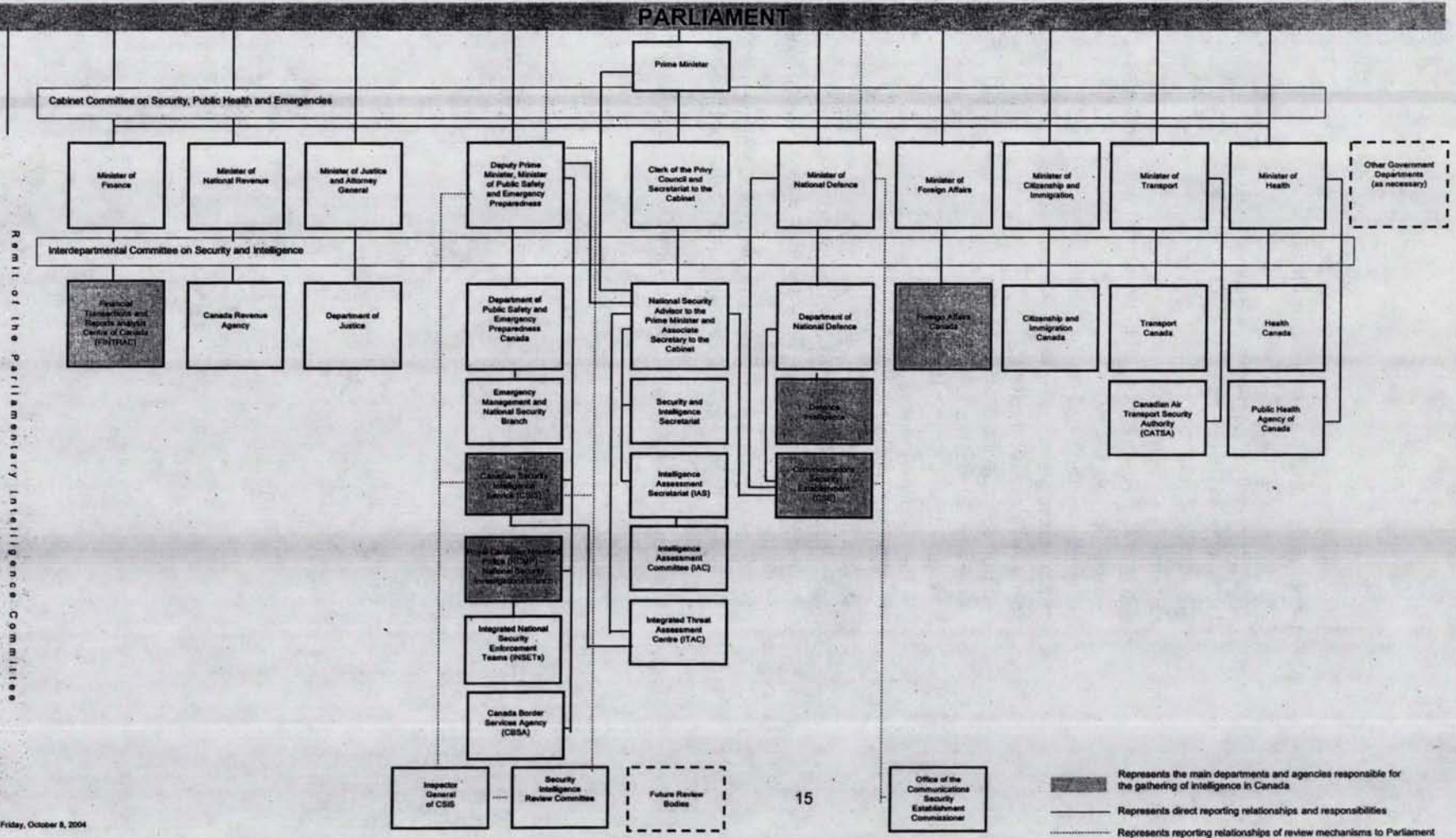
Professor Peter Hennessy, Department of History, Queen Mary, University of London

Dr. Kevin O'Brien, Senior Policy Analyst, RAND Europe

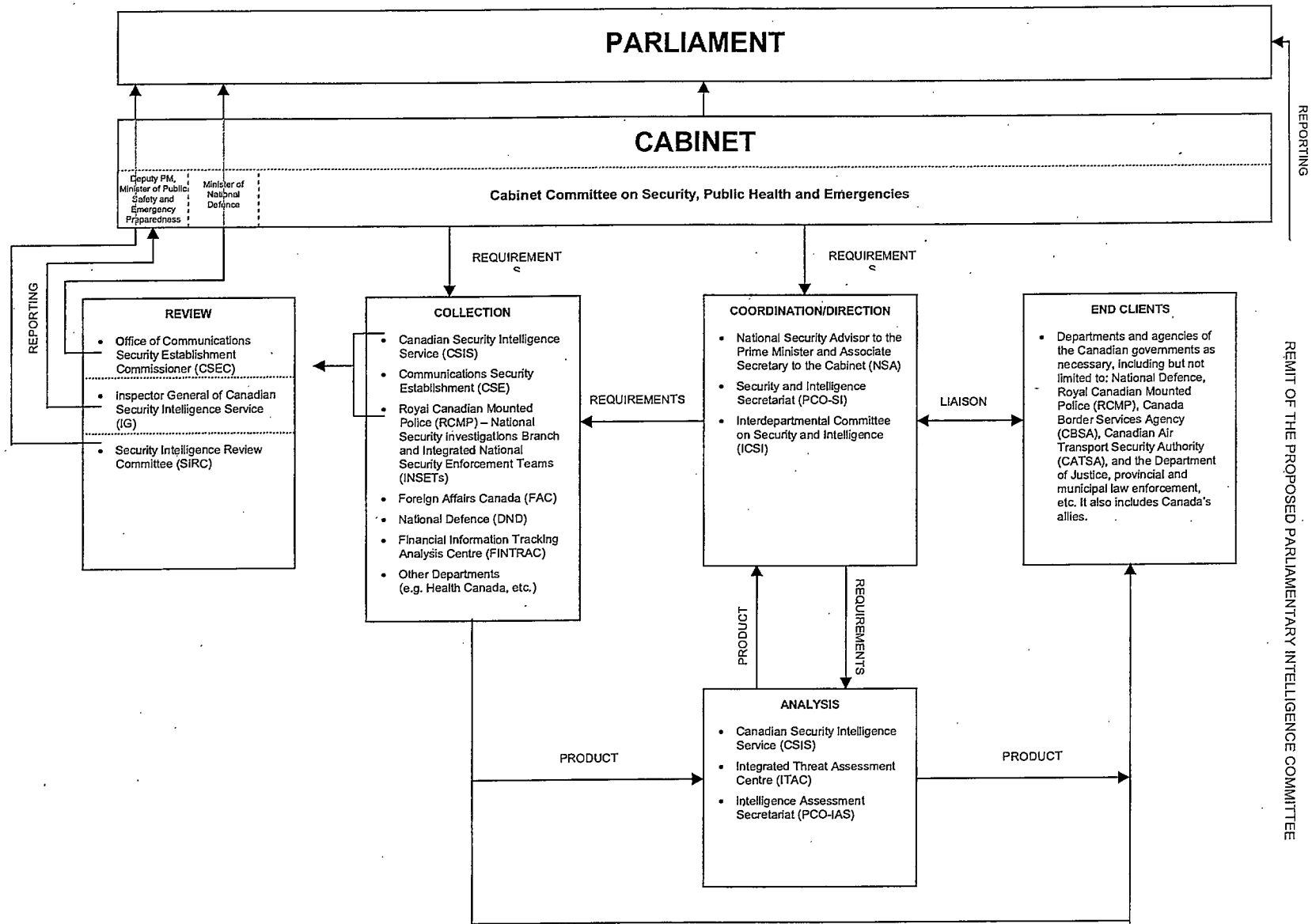
Dr. Philip Davies, Deputy Director, Brunel Centre for Intelligence and Security Studies

Professor Ian Leigh, Department of Law, Durham University

ANNEX B: AN ILLUSTRATIVE CHART OF THE DEPARTMENTS AND AGENCIES IN THE SECURITY AND INTELLIGENCE COMMUNITY



ANNEX B: PART II — FUNCTIONS AND WORKFLOWS WITHIN THE CANADIAN SECURITY AND INTELLIGENCE COMMUNITY



ANNEX C: CHRONOLOGY OF PARLIAMENTARY ROLE IN SECURITY AND INTELLIGENCE

This annex contains a list of documents, and more recently Government statements, which chronicle Parliament's involvement in security and intelligence issues since 1979.

- 1979 The McDonald Commission Report. Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police. *Security and Information: First Report* (Ottawa: Supply and Services Canada, 1979).
- 1981 The McDonald Commission Report. Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police. *Freedom and security under the law: Second Report*, 2 vol. (Ottawa: Supply and Services Canada, 1981).
- The McDonald Commission Report. Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police. *Certain R.C.M.P. activities and the question of governmental knowledge: third report* (Ottawa: Supply and Services Canada, 1981).
- November 1983 The Pitfield Report. Parliament. Senate. Special Committee on the Canadian Security Intelligence Service. *Report of the Special Committee of the Senate on the Canadian Security Intelligence Service, Delicate balance: a security intelligence service in a democratic society* (Ottawa: The Senate, 1983).
- June 28, 1984 Royal Assent given to Bill C-9, *An Act Establishing the Canadian Security Intelligence Service*.
<http://laws.justice.gc.ca/en/C-23/text.html>
- October 1987 The Osbaldeston Report. Independent Advisory Team. *People and process in transition: report to the Solicitor General* (Ottawa: Solicitor General Canada, 1987).
- July 30, 1987 Parliament. Senate. Senate Special Committee on Terrorism and the Public Safety, *Report* (Ottawa: Supply and Services Canada, 1987).
- June 28, 1989 Parliament. Senate. Senate Special Committee on Terrorism and the Public Safety, *Second Report* (Ottawa: Supply and Services Canada, 1989). The Second Report was the Special Committee's final report.

- September 1990 Five-year review of the CSIS Act. Parliament. House of Commons. Special Committee on the Review of the CSIS Act and the Security Offences Act. *In flux but not in crisis: a report of the House of Commons Special Committee on the Review of the Canadian Security Intelligence Service Act and the Security Offences Act* (Ottawa: House of Commons Publications Service, 1990).
- February 25, 1991 Solicitor General of Canada. *On course: national security for the 1990s: the government's response to the Report of the House of Commons Special Committee on the Review of the Canadian Security Intelligence Service Act and the Security Offences Act* (Ottawa: Solicitor General Canada, 1991).
- June 13, 1991 Motion passed establishing the National Security Subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General. Parliament. House of Commons. *Proceedings of the House of Commons Standing Committee on Justice and the Solicitor General, Proceedings, Meeting Number 5, 34th Parl. 3rd Sess., June 13, 1991.*
- June 2, 1994 Motion passed re-establishing the National Security Subcommittee of the House of Commons Standing Committee on Justice and Legal Affairs. Parliament. House of Commons. *Proceedings of the House of Commons Standing Committee on Justice and Legal Affairs, Proceedings, Meeting Number 19, 35th Parl. 1st Sess., June 13, 1994.*
- December 9, 1994 Security Intelligence Review Committee. *The Heritage Front Affair: report to the Solicitor General of Canada* (Ottawa: Security Intelligence Review Committee, 1994).
- June 19, 1996 Parliament. House of Commons. Standing Committee on Justice and Legal Affairs. *The Heritage Front Affair: Our view: First report of the Standing Committee on Justice and Legal Affairs, National Security Subcommittee* (Ottawa: House of Commons Publications Service, 1996).
- November 1996 Office of the Auditor General of Canada, "The Canadian Intelligence Community — Control and Accountability", Chapter 27, *Report of the Auditor General of Canada to the House of Commons, November 1996.*
<http://www.oag-bvg.gc.ca/domino/reports.nsf/html/9627ce.html>

- December 1998 Office of the Auditor General of Canada, "Follow-up of Recommendations in Previous Reports", Chapter 28, *Report of the Auditor General of Canada to the House of Commons*, December 1998.
- January 1999 Parliament. Senate. Special Committee on Security and Intelligence, *The report of the Special Senate Committee on Security and Intelligence* (Ottawa: The Senate, 1999).
<http://www.parl.gc.ca/36/1/parlbus/commbus/senate/com-e/secu-e/rep-e/repsecintjan99-e.htm>
- May 31, 2001 The Senate established the Senate Standing Committee on National Security and Defence. Parliament. Senate, *Journals of the Senate*, Issue 13, 37th Parl: 1st Sess., May 31, 2001.
http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/defe-e/01or-e.htm?Language=E&Parl=37&Ses=1&comm_id=76
- December 18, 2001 Royal Assent given to Bill C-36, *The Anti-Terrorism Act*.
<http://laws.justice.gc.ca/en/A-11.7/2092.html>
- December 2002 Parliament. House of Commons. Standing Committee on Foreign Affairs and International Trade, *Partners in North America: Advancing Canada's Relations with the United States and Mexico* (Ottawa: Standing Committee on Foreign Affairs and International Trade, 2002). The Committee recommends, p. 96-98, increased parliamentary scrutiny of intelligence (Recommendation Number 10).
<http://www.parl.gc.ca/InfoComDoc/37/2/FAIT/Studies/Reports/fairp03/03-cov2-e.htm>
- May 7, 2003 *Government Response to the Report of the Standing Committee on Foreign Affairs and International Trade Partners in North America: advancing Canada's relations with the United States and Mexico* (Ottawa: Government of Canada, 2003), pp. 17-18.
<http://www.dfait-maeci.gc.ca/tna-nac/documents/GovtResponse-en.pdf>

- December 12, 2003 Office of the Prime Minister. "Changing Government — Prime Minister announces appointment of Cabinet — news release," December 12, 2003. <http://www.pm.gc.ca/eng/news.asp?category=1&id=2>
- Canada. Office of the Prime Minister. "Democratic reform — news release", December 12, 2003. <http://www.pm.gc.ca/eng/news.asp?id=1>
- February 4, 2004 Office of the Prime Minister. "Martin government tables Democratic Reform Action Plan — news release", February 4, 2004. <http://www.pm.gc.ca/eng/news.asp?id=52>
- Privy Council Office. *Ethics, responsibility, accountability: an action plan for democratic reform* (Ottawa: Government of Canada, 2004). http://www.pco-bcp.gc.ca/docs/Publications/dr-rd/dr-rd_e.pdf
- March 31, 2004 Department of Public Safety and Emergency Preparedness Canada. *A national security committee of parliamentarians: a consultation paper to help inform the creation of a committee of parliamentarians to review national security* (Ottawa: Government of Canada, 2004). http://www.psepc-sppcc.gc.ca/publications/national_security/pdf/nat_sec_cmte_e.pdf
- Statements by Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness Anne McLellan in the House of Commons on the day *A national security committee of parliamentarians* was tabled in the House of Commons. <http://www.parl.gc.ca/PDF/37/3/parlbus/chambus/house/debates/Han033-E.PDF>
- April 2004 Privy Council Office. *Securing an open society: Canada's national security policy* (Ottawa: Government of Canada, 2004), p. 19. http://www.pco-bcp.gc.ca/docs/Publications/NatSecurnat/natsecurnat_e.pdf
- May 13, 2004 Office of the Leader of the Government in the House of Commons, "Establishment of an Interim Committee on National Security — news release." http://www.pco-bcp.gc.ca/lgc/default.asp?Language=E&Page=NewsRoom&Sub=press&Doc=20040514_secur_e.htm

ANNEX D: COST OF A PARLIAMENTARY INTELLIGENCE COMMITTEE

Our preliminary estimate of the resources that might be required to adequately fund the proposed Parliamentary Intelligence Committee for a year is, accepting a precondition, approximately \$3 million.

That amount is based on the budgets of the Interim Committee on National Security, and Canada's existing security and intelligence review bodies.

Our estimate presupposes that certain capital and infrastructure costs of the proposed Parliamentary Intelligence Committee would be assumed by other parts of Parliament and/or the government. Those costs include but are not limited to: secure facilities for meetings and office space; secure systems for communications and the management of classified information; the provision of sufficient security-cleared operations staff to conduct transcription and simultaneous translation at meetings, handle technical issues, and produce reports. If the proposed Parliamentary Intelligence Committee had to assume these costs, and other similar ones, its budget would have to expand considerably.

Over and above these infrastructure costs, we estimate that the Parliamentary Intelligence Committee will require a budget of approximately \$3 million annually. We predict that the two largest costs the proposed Parliamentary Intelligence Committee would incur are from its analytical staff, and travel.

The proposed Parliamentary Intelligence Committee will not be able to function without a professional, analytical staff. Considering the size and complexity of the proposed Parliamentary Intelligence Committee's mandate — to scrutinize the activities of almost a dozen agencies and departments that expend over a billion dollars annually and employ thousands of people — it will require an appropriately large staff. It should be noted that the members will be unable to involve their existing staff in Parliamentary Intelligence Committee's work because of security requirements. A number of staff will be required to aid committee members' develop expertise in security and intelligence and manage the workload demanded by the committee.

Travel will also need to be a part of the Parliamentary Intelligence Committee's work to help it strengthen its understanding of emerging issues, and to maintain relationships with Canada's intelligence community and other scrutiny bodies around the world. All the other intelligence review bodies that the interim committee met with have found it necessary to travel on a regular basis to carry out their mandate and to

harmonize their practices with those of other review bodies in allied countries. We expect the proposed Parliamentary Intelligence Committee will do the same. What travel the proposed Parliamentary Intelligence Committee might undertake in a given year is, of course, speculative at this point. However, it would be reasonable to build a travel plan with the same objectives as that provided for in the Security Intelligence Review Committee's *2003-2004 Report on Plans and Priorities*. These costs, we estimate, will account for approximately a third of the proposed committee's operating budget.

Sufficient resources to allow effective parliamentary scrutiny of intelligence will be around \$3 million per annum. We arrived at our estimate through a series of pro forma calculations which we have not included in our report because they entered into unnecessary detail. We would, however, be willing to discuss our calculations with you at a later date.

ANNEX E: SECTION 39 OF THE *CANADIAN SECURITY INTELLIGENCE SERVICE ACT* (R.S.C. 1985, C.C-23)

***Canadian Security Intelligence Service Act* CHAPTER C-23**

39. (1) Subject to this Act, the Review Committee may determine the procedure to be followed in the performance of any of its duties or functions.

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, but subject to subsection (3), the Review Committee is entitled

(a) to have access to any information under the control of the Service or of the Inspector General that relates to the performance of the duties and functions of the Committee and to receive from the Inspector General, Director and employees such information, reports and explanations as the Committee deems necessary for the performance of its duties and functions; and

(b) during any investigation referred to in paragraph 38(c)¹, to have access to any information under the control of the deputy head concerned that is relevant to the investigation.

(3) No information described in subsection (2), other than a confidence of the Queen's Privy Council for Canada in respect of which subsection 39(1) of the *Canada Evidence Act* applies, may be withheld from the Committee on any grounds.²

¹ Paragraph 38(c) refers to the Security Intelligence Review Committee's complaints functions.

² A precedent was set in the early years of the Security Intelligence Review Committee's existence which instituted a system whereby the Minister responsible for the Canadian Security Intelligence Service transmitted Cabinet instructions to the Service by means other than a cabinet document, thereby making the Government's instructions available to SIRC.