

**THE ROYAL CANADIAN MOUNTED POLICE AND  
THE CANADIAN SECURITY INTELLIGENCE SERVICE**

**A COMPARISON OF OCCUPATIONAL AND  
ORGANIZATIONAL CULTURES**

**Paper presented by**

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**to the Commission of Inquiry into the Investigation of  
the Bombing of Air India Flight 182**



## Introduction<sup>1</sup>

The purpose of this study paper is to present a comparative analysis of the occupational and organizational cultures of the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP). CSIS is a civilian agency, and none of its members work in uniform. In contrast, the RCMP was first created in 1873 as a military force – the North West Mounted Rifles<sup>2</sup> – and the majority of its members still operate in uniform. It would be interesting to compare a civilian agency such as CSIS and a uniformed policing organization in all their aspects. However, such a comparison would be only of academic interest to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. The Commission's mandate, as its title makes clear, is to inquire into the *investigation* of the bombing of Air India Flight 182. The investigative arm of the RCMP (and other police forces) and CSIS carried out this investigation, so I propose to focus on the respective cultures of both agencies *as they came into contact* in the context of a particular investigation and other overlapping duties.

My study relies on open sources. There is both a dearth and an abundance of such sources. A recent review of the research literature on policing has shown that criminal investigation was the least researched subject in the field of policing.<sup>3</sup> When criminal investigators are studied, researchers focus less on their professional culture than on their role in criminal prosecutions.<sup>4</sup> Because the work of security intelligence agents is shrouded in secrecy, their professional culture is generally not the object of empirical study. The academic literature on spying generally focuses

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  - <sup>2</sup> Jean-Paul Brodeur, "La Gendarmerie Royale du Canada" in *Les Cahiers de la Sécurité intérieure, Gendarmeries et polices à statut militaire* (Paris: Institut des Hautes Études de la Sécurité intérieure, La Documentation française, 1992) 173 at 175.
  - <sup>3</sup> U.S., National Research Council, Committee to Review Research on Police Policy and Practices, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education *Fairness and Effectiveness in Policing; The Evidence* (Washington, DC: The National Academies Press, 2003) at chapter 1.
  - <sup>4</sup> Andrew Sanders, "From Suspect to Trial" in M. Maguire, R. Morgan and R. Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 1994) 773 (Sanders' classic study is tellingly entitled "From Suspect to Trial."); Jean-Paul Brodeur "L'enquete policiere" in *Criminologie* (Montreal: Les Presses de l'Université de Montreal, 2005) 39.

on historical research.<sup>5</sup> For glimpses into the “wilderness of mirrors,”<sup>6</sup> one has to rely on disgruntled spies with an axe to grind,<sup>7</sup> biographies,<sup>8</sup> the published work of investigative journalists<sup>9</sup> or the occasional memoirs of bureaucrats with a reputation to save.

It is precisely because of this dearth of first hand sources on the occupational and organizational cultures of criminal investigation units and security agencies that we have to skim through various bodies of literature in order to glean elements that can allow us to complete the picture. The field that we have to cover is relatively broad, but there is a wealth of government literature, including reports of special commissions of inquiry and task forces, reports and written proceedings of parliamentary committees,<sup>10</sup> annual reports of the bodies that review CSIS and the RCMP, and the reports of these two agencies themselves. As my paper will show, I have covered these sources nearly exhaustively. I found one source to be particularly rich – the annual reports and *ad hoc* studies<sup>11</sup> of the Security Intelligence Review Committee (SIRC).<sup>12</sup> SIRC investigated the bombing of Air India Flight 182<sup>13</sup> and offered to make all

<sup>5</sup> Christopher Andrew, *Her Majesty's Secret Service* (New York: Viking Press, 1986); Christopher Andrew and Oleg Gordievsky, *KGB - The Inside Story* (London: Hodder & Stoughton, 1990); Alain Dewerpe, *Espion: Une Anthropologie historique du secret d'État contemporain* (Paris: Gallimard, 1994).

<sup>6</sup> D.C. Martin, *Wilderness of Mirrors* (New York: Harper and Row, 1980).

<sup>7</sup> Allen Dulles *The Craft of Intelligence* (New York: Signet Books, 1965); V. Marchetti and J.D. Marks, *The CIA and the Cult of Intelligence* (New York: Alfred A. Knopf, 1974); William Colby, *Honorable Men: My Life in the CIA* (New York: Simon and Schuster, 1978); Mike Frost and Michel Gratton, *Spyworld* (Toronto: Doubleday, 1994).

<sup>8</sup> Thomas Powers, *The Man Who Kept the Secrets: Richard Helms and the CIA* (New York: Alfred A. Knopf, 1979); Tom Mangold, *Cold Warrior: James Jesus Angleton: The CIA's Master Spy Hunter* (London: Simon and Schuster, 1991).

<sup>9</sup> John Sawatsky, *For Services Rendered: Leslie James Bennett and the RCMP Security Service* (Toronto: Doubleday, 1982); Richard Cl  roux, *Official Secrets: The Story behind the Canadian Security Intelligence Service* (Toronto: McGraw-Hill Ryerson, 1990); Andrew Mitrovica, *Covert Entry: Spies, Lies and Crimes Inside Canada's Secret Service* (Toronto: Random House, 2002).

<sup>10</sup> For example, see Canada, Senate, *A Delicate Balance: A Security Intelligence Service in a Democratic Society: Report of the Special Committee of the Senate on the Canadian Security Intelligence Service* (Ottawa: Supply and Services Canada, 1983); *Terrorism: Report of the Senate Special Committee on Terrorism and Public Safety* (Ottawa: Minister of Supply and Services Canada, 1987); and *Terrorism: Report of the Second Special Committee of the Senate on Terrorism and Public Safety* (Ottawa: Minister of Supply and Services, 1989).

<sup>11</sup> For instance, on December 9, 1994, the Security Intelligence Review Committee released an extensive report to the Solicitor General of Canada: Security Intelligence Review Committee, *The Heritage Front Affair: Report to the Solicitor General of Canada* (Ottawa: Security Intelligence Review Committee, 1994).

<sup>12</sup> SIRC's annual reports cover the fiscal year (for example, 2006-07). Over the years, the reports have carried different titles – for example, *Annual Report 1994-95: An Operational Audit of CSIS Activities: Annual Report 1996-1997*; and *SIRC Report 2002-2003: An Operational Review of the Canadian Security Intelligence Service*. This paper refers to all these annual reports as follows: *SIRC Annual Report [fiscal year]* – for example, *SIRC Annual Report 1994-95*.

<sup>13</sup> *SIRC Annual Report 1991-92*.

its findings available to a royal commission if the government convened one.<sup>14</sup> More important for the purposes of this study, SIRC presided over the transition from the RCMP Security Service to the creation of CSIS and later assessed the co-operation by CSIS with the RCMP.<sup>15</sup> In a significant way, the annual reports of SIRC chronicle the repeated meeting of the professional cultures of CSIS and of the RCMP.

This paper has four parts. First, I provide **context** for the analyses of the occupational and organizational cultures of CSIS and the RCMP. Second, I discuss the **main contrasts** between these two cultures. Third, I examine more briefly a series of other differences. Last, I provide a summary of the contrasting features of CSIS and the RCMP and elaborate on some of them. I conclude with suggestions for the Commission to consider.

## 1. CULTURES IN CONTEXT

Here, I provide the context for discussing the respective occupational and organizational cultures of CSIS and the RCMP. First, I will refer to the 1985 bombing of Flight 182 and related attempts at terrorism that form the backdrop of this study. Second, I will then review the transition from the RCMP Security Service to CSIS and the evolution of the relationship between the two agencies. Although it is not the purpose of this paper to study the history of both agencies, it is crucially important to be aware that CSIS had not even been in existence for a year when Air India Flight 182 exploded over the Atlantic on June 23, 1985. As CSIS only began its formal existence on July 16, 1984, and it is highly unlikely that by June 1985 it had developed its own professional culture. Contrasting CSIS with the RCMP in 1985 is premature, as CSIS was at that time only a second incarnation of the RCMP Security Service and had yet to elaborate its own independent character.

**In my view, the Commission should explore the hypothesis that the Air India investigation was irremediably bungled in its initial stages because of the investigative chaos that was consequent upon the transition from the RCMP Security Service to the newly created CSIS (wholly staffed with recycled RCMP Security Service personnel), rather than because of a difference between police and security intelligence agency professional cultures.** I will come back to this suggestion in my concluding remarks.

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<sup>14</sup> SIRC *Annual Report 1994-95* at 23.

<sup>15</sup> SIRC *Annual Report 1997-98* at 27-32, referring to SIRC Report #101 (CSIS Cooperation with the Royal Canadian Mounted Police – Part I); SIRC *Annual Report 1998-99* at 20-24, referring to SIRC Report #108 (CSIS Cooperation with the RCMP – Part II).

## 1.1 The Bombing of Air India Flight 182 and Related Events

Air India Flight 182 exploded while airborne, and everyone on board – 329 persons – died. On the same day, a suitcase bomb detonated at Tokyo's Narita Airport, killing two baggage handlers as they were unloading CP Air Flight 003 from Vancouver. In addition to these high profile incidents, Santokh Singh Khela and Kashmir Singh Dhillon were convicted in Quebec of conspiracy to commit murder in relation to an attempt to recruit persons to help them blow up an Air India plane in New York in the fall of 1985. They were sentenced in 1986 to life imprisonment (I return later to this lesser-known incident).

Despite extensive investigative efforts by the RCMP and CSIS, the bombing of Air India Flight 182 and the explosion at Narita Airport remained unsolved. In the years immediately following the 1985 attacks, there was frequent criticism of the agencies conducting the investigation for not bringing any suspect to trial. There were no criminal proceedings directly related to Flight 182 until April 2003, when three members of the Vancouver Sikh community – Ajaib Singh Bagri, Ripudaman Singh Malik and Inderjit Singh Reyat – were accused of conspiracy to bomb Air India planes. Reyat pleaded guilty to manslaughter, but Bagri and Malik were acquitted.

SIRC had the mandate to oversee CSIS, and SIRC's first reports frequently referred to the Air India bombings.<sup>16</sup> SIRC decided in December 1988 to conduct an inquiry into the role of CSIS in the Air India investigation, but the Government opposed SIRC's decision, arguing that an inquiry could hinder the RCMP investigation of the Air India bombings and the course of justice.<sup>17</sup> In May 1991, Inderjit Singh Reyat was tried for the Narita bombing and convicted of manslaughter for making the bomb and helping others to make it.<sup>18</sup> This development opened the way for SIRC's inquiry, which was then held during 1991 and 1992. SIRC's inquiry report was "a long one and much of its content must remain classified."<sup>19</sup>

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<sup>16</sup> SIRC refers to the Air India bombings in several places in its annual reports: *SIRC Annual Report 1985-86* at 17; *SIRC Annual Report 1986-87* at 28; *SIRC Annual Report 1987-88* at 1, 30; *SIRC Annual Report 1988-89* at 5, 20; *SIRC Annual Report 1989-90* at 17; *SIRC Annual Report 1990-91* at 17; *SIRC Annual Report 1991-92* at 5-14 (the report on SIRC's own Air India inquiry); *SIRC Annual Report 1994-95* at 23 ("Should the Government of Canada see fit to convene a Royal Commission to investigate all dimensions of the terrorist act, we will offer our complete cooperation.")

<sup>17</sup> *SIRC Annual Report 1990-91* at 17-18.

<sup>18</sup> Reyat would plead guilty to a similar charge in relation to the bombing of Air India Flight 182 in 2003.

<sup>19</sup> *SIRC Annual Report 1991-92* at 5.

The content of the report that could be publicly divulged is published as part of a SIRC report.<sup>20</sup> The inquiry report addresses several issues relating to the respective professional cultures of CSIS and the RCMP and also discusses the co-operation of these agencies in the Air India investigation from 1985 to 1991, so it not only provides context for this paper but is also a good introduction to our topic.

A. *Threat assessments.* Bolan<sup>21</sup> mentions that CSIS issued no less than 15 threat assessments to the RCMP in the months preceding the Air India bombings, making it seem that their planning took place under the nose of CSIS. Actually, CSIS was tasked to investigate Sikh extremism because of the impending visit to Canada of Indian Prime Minister Rajiv Gandhi. The Government of India warned Canada about threats to India's national airline. These warning were not initially addressed to CSIS, but to the Department of External Affairs or the RCMP. The RCMP asked CSIS to provide a threat assessment on the basis of these warnings. CSIS confirmed on June 6, 1985, that the threat to Indian interests in Canada, including Air India, was high, but that it had no specific information about an impending attack against the airline. After Rajiv Ghandi's departure from Canada on June 17, CSIS relaxed its surveillance, and less than a week later, on June 23, the bombings occurred. The CSIS surveillance project had not produced any actionable intelligence about the conspiracy against Air India.<sup>22</sup>

B. *Intelligence follow-up.* This conclusion about a lack of actionable intelligence can be questioned. On June 4, 1985, a CSIS agent followed a person under surveillance to Vancouver Island, where the person met with Inderjit Singh Reyat, later revealed to be a bomb expert. They drove to a remote area and conducted a noisy experiment that the agent mistook from a distance as the discharge of a rifle. CSIS investigators warned the RCMP the following day, but neither agency undertook to follow up this lead by conducting a physical search to verify whether the noise was actually a rifle shot. The RCMP did conduct such a search after the Air India bombings, and the search produced evidence that an explosive device may have been tested on the site. Even then, this finding was not followed up by any analysis, nor was the targeting of the two individuals renewed.<sup>23</sup>

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<sup>20</sup> *Ibid.* at 5-14.

<sup>21</sup> Kim Bolan, *Loss of Faith: How the Air India Bombers Got Away with Murder* (Toronto: McClelland & Stewart, 2005) at 48.

<sup>22</sup> SIRC *Annual Report 1991-92* at 8-9.

<sup>23</sup> *Ibid.* at 8.

C. *Cooperation between CSIS and the RCMP.* SIRC's conclusions about the level of co-operation between CSIS and the RCMP were laced with ambiguities that would become the hallmark of SIRC's future *public* assessments. SIRC found no general evidence of "conflict or lack of co-operation" between the two agencies and downplayed "personality differences" and "one serious dispute" involving "an acrimonious exchange between two senior officers of the agencies" after the tragedy. All of this certainly appeared to contradict SIRC's overall assessment.<sup>24</sup> The contentious issue was that some CSIS agents performed their inquiries as though they were criminal investigators and competed with the RCMP to solve a case that fell squarely within the criminal investigation mandate of the RCMP. According to SIRC, this tension was generated by the lack of instructions from CSIS headquarters clarifying the CSIS mandate *vis-à-vis* the RCMP mandate to conduct criminal investigations, and the failure to set CSIS policies about sharing intelligence with the RCMP.<sup>25</sup> This explanation is somewhat surprising, since a memorandum of understanding (MOU) between CSIS and the RCMP was signed on July 17, 1984, and coincided with the birth of CSIS.<sup>26</sup> Memoranda of understanding between CSIS and the RCMP were also exchanged in 1986-87 and in 1989-90.<sup>27</sup> This situation highlights the problem of disseminating instructions from the headquarters of both agencies to their regional offices and of ensuring that the instructions are applied in the field. It remains to be seen whether the RCMP/CSIS MOU signed on September 29, 2006, will fare better than its predecessors.

D. *The destruction of criminal evidence.* Competition between CSIS and RCMP investigators was not the only source of friction between the two agencies. CSIS was reluctant to expose its files on Sikh extremism to the RCMP. CSIS argued that these files had been developed for intelligence, not evidentiary, purposes. The matter was resolved after "lengthy negotiations" that determined conditions on the subsequent use by the

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<sup>24</sup> *Ibid.* at 10.

<sup>25</sup> *Ibid.*

<sup>26</sup> The Honourable Bob Rae, *Lessons to Be Learned, the report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, on outstanding questions with respect to the bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005), chapter 4: "The RCMP and CSIS: Background" [Rae Report].

<sup>27</sup> "The Solicitor General has provided us with a copy of a memorandum of understanding between the RCMP and CSIS, consolidating a number of arrangements for cooperation and for sharing services and administration:" SIRC *Annual Report 1986-87* at 27. "The Service's relations with the RCMP were put on a more systematic footing in 1989-90 with the signature of a Memorandum of Understanding (MOU) between the two. The MOU does not add anything new, but it brings together in one coherent document a number of ministerial directions issued to both agencies over the years:" SIRC *Annual Report 1989-90* at 16.



RCMP of the CSIS files. SIRC<sup>28</sup> found no evidence that access to available CSIS intelligence relevant to the RCMP Air India investigation was “**unreasonably**” denied to the Force. There was, however, one serious practical problem that could not possibly be solved. Between March and July 1985, CSIS erased three-quarters of the 200 or so audiotapes recording conversations of its investigation’s principal target.<sup>29</sup> The destruction of these tapes after their content had been summarized and logged was apparently in conformity with CSIS policy – a policy that SIRC later judged to be seriously deficient.<sup>30</sup> Furthermore, an instruction was issued to CSIS **three months before it came into being**, which removed from the Service (whose members were deprived of law enforcement powers) the capacity to collect and preserve tapes as criminal evidence. However, another instruction compelled CSIS to retain tapes containing incriminating passages for one year. For reasons said by SIRC to be unclear, the regional offices of CSIS chose to ignore this second instruction.<sup>31</sup>

The erasure of the tapes uncovers two problems. First, some of the information contained in the taped conversations was destroyed, as it may not have been logged in the written summaries of the tapes. Second, it shows the gap between *intelligence*, which may be summarized and stored in any convenient way for future analysis, and *evidence*, which ought to be preserved in its original form for later production in court.<sup>32</sup> The difference between intelligence and evidence is a critical issue that will be discussed in detail in subsequent parts of this paper.

This review of the findings of SIRC’s inquiry into the investigation of the Air India bombings and into the cooperation between CSIS and the RCMP already highlights many of the issues that I will focus on, particularly the difference between intelligence and evidence and the contrasting attitudes of agencies, depending on whether they are

<sup>28</sup> SIRC *Annual Report 1991-92* at 10.

<sup>29</sup> A CSIS agent revealed to *The Globe and Mail* in an interview that he had destroyed hours of audio-taped interviews with two confidential sources who belonged to the Vancouver Sikh community instead of handing the tapes to the RCMP. He feared that the RCMP would reveal the identity of the sources by summoning them to testify in public court proceedings. This agent said that “his actions were the result of a fierce turf war between the RCMP and CSIS” and that in its early stages CSIS’s investigation “was so badly bungled that there was a near mutiny by CSIS officers involved in the probe:” Andrew Mitrovica and Jeff Sallot, “CSIS agent destroyed Air-India evidence,” *The Globe and Mail* (January 26, 2000) A1-A2. This latter testimony on the intensity of the frictions between CSIS and the RCMP contrasts with SIRC’s reassuring conclusions.

<sup>30</sup> SIRC *Annual Report 1991-92* at 11.

<sup>31</sup> *Ibid.* at 12-13.

<sup>32</sup> Kim Bolan shows that judges differ dramatically in their pronouncements about whether erasing audiotapes deprives an accused of *Charter* rights in criminal proceedings: *Loss of Faith: How the Air India Bombers Got Away with Murder*, *supra* note 21 at 359-60.

collecting intelligence or evidence. It also displays the limited ability of MOUs to smooth the edges of agencies with mandates that occasionally overlap. Finally, it shows that in the years immediately following its coming onto being, CSIS was staffed by people in job transition. Its organizational culture was hybrid, blending features that characterized a police organization, such as cracking a big case, with those that were also characteristic of an intelligence agency, such as the reluctance to share information. I will now discuss this topic in more detail.

## 1.2 Evolving professional cultures

I focus in this section on the evolution of the occupational and organizational culture of CSIS from its creation in 1984 to the present day, since the change in CSIS was much more pronounced than in the RCMP. I shall also briefly discuss the case of the RCMP and of the other Canadian police forces. By “occupational culture” I mean a set of beliefs, assumptions and values underpinning the *modus operandi* of the individual members of an agency (for example, whether they act alone or as a team). An agency’s organizational culture consists of its mindset and the consequences of systemic features that are built into its structure (for example, whether it is centralized or decentralized). Needless to say, the organizational culture shapes the occupational culture. I use the words “professional culture” as shorthand to refer to both aspects of a work culture at the same time. It is important to stress that for me professional cultures translate into action in the field. I will distinguish the three different phases of CSIS’s professional culture and I will present the cultural evolution of the RCMP as a whole.

### 1.2.1 CSIS: From the primacy of field operations to the primacy of intelligence (1984-1991)

After its creation in July 1984, CSIS first went through a difficult transitional phase during which **SIRC spearheaded its transformation**. When CSIS came into being, 95 per cent of the former personnel of the RCMP Security Service elected to transfer to the new agency and for several years, these former RCMP officers constituted more than 80 per cent of CSIS intelligence officers (IOs). As SIRC emphasized, “they brought the memories and habits of the RCMP with them.”<sup>33</sup> CSIS also inherited all the files of the RCMP Security Service – 510,000 of them – many of which targeted individual and groups believed to be merely “subversive” and

<sup>33</sup> SIRC Annual Report 1986-87.

presenting no clear and present threat to Canada. Human sources that had been recruited by the RCMP Security Service began to report to CSIS handlers and were a potential source of trouble.<sup>34</sup> The professional culture of CSIS was then marked by two features. I must emphasize that these were the predominant features of CSIS culture in the year that preceded the Air India bombings and during their aftermath.

First, the culture of CSIS was based on unwarranted suspicion rather than threat assessments rigorously grounded in fact. The RCMP's emphasis on counter-subversion, which was initially carried over to CSIS, testified to the pervasiveness of this culture of unwarranted suspicion.

Second, the approach taken by CSIS reflected the case-oriented approach of police work.<sup>35</sup> It was institutionally biased in favour of information gathering by **operational programs** – counter-intelligence and counter-terrorism – instead of advice to government.<sup>36</sup> Its Analysis and Production Branch stressed short-term tactical analysis and neglected basic strategic intelligence. It also favoured generalists who produced shallow analyses about many subjects over specialists who researched an issue in depth. This kind of approach was later the target of severe criticism by U.S. Senator Richard C. Shelby, who examined the FBI's intelligence failures in the months preceding the attacks against the United States on September 11, 2001. "Intelligence analysts," said Senator Shelby, "would doubtless make poor policemen, and it has become very clear that policemen make poor intelligence analysts."<sup>37</sup> Shelby summarized his diagnosis of this intelligence failure by denouncing the "tyranny of the case file." It was precisely this tyranny that was being exercised within CSIS. Even though they had been deprived of their peace officer powers, CSIS agents competed with RCMP investigators in trying to solve the bombing of Air India Flight 182. CSIS was on the case and would not let go.

CSIS closed the Sir William Stephenson Academy in 1987 because it believed that recruits with a police background needed no additional training and could make a "direct entry" into the Service. CSIS had apparently decided to hire only persons with a professional police background and had in

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34 One of these sources – Marc-André Boivin – was recruited in 1973 by the RCMP Security Service and had risen to be an official in the Quebec labour movement. Mr. Boivin was facing bomb-related charges in 1988 when the media reported that he was a CSIS source, perhaps an *agent provocateur*: SIRC Annual Report 1987-88 at 16-17.

35 SIRC Annual Report 1986-87 at 13.

36 SIRC Annual Report 1988-89 at 17.

37 U.S., Senate Select Committee on Intelligence, "September 11 and the Imperative of Reform in the U.S. Intelligence Community: Additional Views of Senator Richard C. Shelby, Vice Chairman, Senate Select Committee on Intelligence" (Washington, DC: Congress, 2002) at 62.

consequence no more need for a training academy, as former police officers were immediately integrated into the Service. This approach collided head-on with the policy of civilianization that had led to the creation of CSIS. SIRC declared that it was subsequently “stunned to hear that CSIS had hired 16 former police officers in the last quarter of 1986 and left no positions open for new recruits from the universities or civilian employment. As a result, the Academy has been closed down for a year, and further civilianization has been stalled.”<sup>38</sup> In the opening words of its 1986-87 annual report, SIRC expressed its “mounting” concern that “civilianization [was] proceeding too slowly because of heavy recruitment of ex-police officers. This can only perpetuate the law-enforcement approach that Parliament intended to change when it adopted the *CSIS Act*.”<sup>39</sup>

The Government reacted by creating the Independent Advisory Team on the Canadian Security Intelligence Service (IAT), led by the Hon. Gordon F. Osbaldeston.<sup>40</sup> The IAT tabled its report in October 1987. The report contained 34 major recommendations bearing on recruitment and training, the intelligence product, counter-subversion, the security intelligence network and various other matters. Following the publication of this report, the CSIS recruitment policy was revised and the Stephenson Academy was reopened. The Counter-Subversion Branch of CSIS was progressively disbanded and most of its files disposed of. The Analysis and Production Branch (APB) became the Requirements, Analysis and Production Branch (RAP) and was significantly expanded.

SIRC used the IAT report as its basis for promoting the transformation of CSIS into an *intelligence* agency with a role not merely to pile up facts, but to advise the government on the strength of thoughtful analysis. Its efforts met with success, and SIRC declared with obvious satisfaction, “The Cinderella story of the Analysis and Production Branch (RAP) continued in 1989-90. When we made a special study of RAP in 1987-88, we found it was a neglected step-sister in the CSIS family. Today it seems to be the glamorpuss. The change is good news.”<sup>41</sup> For all practical purposes, CSIS had begun in earnest to change its law enforcement culture based on

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<sup>38</sup> SIRC *Annual Report 1986-87* at 44.

<sup>39</sup> *Ibid.* at 1. “*CSIS Act*” is an informal abbreviation of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23.

<sup>40</sup> Independent Advisory Team on the Canadian Security Intelligence Service, *People and Process in Transition* (report to the Solicitor General) (Ottawa: Ministry of Supply and Services Canada, 1987) [Osbaldeston IAT Report].

<sup>41</sup> SIRC *Annual Report 1989-90* at 19 [footnotes omitted].

suspicion and caseload, and was developing an intelligence culture that used analysis to produce unbiased threat assessments for its various information consumers. Borrowing from Ericson and Haggerty,<sup>42</sup> CSIS agents had truly become “knowledge workers.”

### **1.2.2 CSIS: The end of the Cold War and the lean years – back to operations (1992-2002)**

The last decade of the 20th century would see the end of the Cold War and the crumbling of the Soviet Bloc. As the existence of national security agencies was in great part predicated on the muted conflict between the Western democracies and the Communist countries, the proclaimed end of this clash was bound to affect CSIS. CSIS began in 1992 to issue a public annual report that listed the types of its operations. This sudden public openness was a sign that CSIS was seeking alternative missions and was ready for new ventures. Indeed, from its peak of \$244 million in 1993-95, the CSIS budget had plummeted to a low of \$167 million in 1997-1998. SIRC’s own budget was decreasing in the same proportion. The number of threat assessments produced by the Service declined from 843 in 1993-94 to 602 in 1995-96, and would continue to slide to 543 before the end of the century.

Although public safety – counter-terrorism – still accounted for 60 per cent of its activity, CSIS tried to resist its decline by becoming involved in new programs. Its 1997 public report thus mentions economic espionage, information warfare, nuclear proliferation and, most tellingly, transnational criminal activity. Some of these programs intruded on the operations of other agencies, most notably the RCMP in respect of transnational crime and the Communications Security Establishment (CSE) in respect of information warfare. However, the most significant development was the gradual phasing out of the former “glamor puss” of CSIS, the RAP. In its 1996-97 secret report to the Government, the Director of CSIS did not mention RAP.<sup>43</sup> SIRC reviewed the intelligence production within CSIS and in its 1998-99 report noted that the Strategic Analysis Unit had been disbanded to allow the integration of strategic analysts into operations. More significantly perhaps, SIRC states that its review of the production of intelligence also identified “a troubling form of professional segregation within the Branch. RAP staff who are not classified as intelligence officers

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<sup>42</sup> Richard V. Ericson and Kevin T. Haggerty, *Policing the Risk Society* (Toronto: University of Toronto Press, 1997).

<sup>43</sup> SIRC *Annual Report 1996-97* at 55.

(IOs) are treated differently in the areas of salary, training, and career advancement."<sup>44</sup> This statement was particularly meaningful because it closely paralleled a much earlier finding expressed in the 1981 report of the McDonald Commission.<sup>45</sup> The McDonald Commission report said that the most bitter members of the RCMP Security Service were the civilian analysts, who claimed to be victims of "administrative apartheid" within the Force.<sup>46</sup> From apartheid to segregation, it seemed that working conditions of the civilian analysts had not much improved in the 15 years that followed the McDonald Commission report. The renewed CSIS focus on operations was mirrored in the change in 1996-97 to SIRC's annual report, which now bore the title, *An Operational Audit of CSIS Activities*.

### 1.2.3 CSIS: Rebirth – the war on terrorism

On September 11, 2001 ("9/11"), two planes flew into the Twin Towers of the World Trade Center in New York. Another crashed into the Pentagon and a fourth crashed on its way to a Washington D.C. target after a rebellion by its passengers. These momentous events officially triggered the occupation of Afghanistan and of Iraq – actions which are said to be part of the larger war against terrorism declared by the United States.

CSIS's budget was increased by 30 per cent for fiscal year 2001-02. This increase was projected to grow annually to at least 36 per cent by fiscal year 2006-07. Things have evolved with so much haste since 9/11 that it is premature to ascertain what they mean for the professional cultures of CSIS and the RCMP. The 2007 preliminary hearing of the four teens accused of belonging to a terrorist organization in the alleged 2006 Toronto terrorist plot should shed some light on how this conspiracy was checked by the police. For the preliminary hearings of the four teens (out of seventeen accused) alone, there are apparently two million pages of evidence on three computer hard drives.<sup>47</sup>

I will limit myself to a few points.

A. *Ahmed Ressam*. Except for 9/11, the most important incident in respect of the U.S. war on terrorism occurred on December 14, 1999, when a U.S.

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<sup>44</sup> SIRC *Annual Report 1998-99* at 11-14, referring to SIRC Report #110 (Review of Intelligence Production).

<sup>45</sup> Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security under the Law*, 2 vols. (Ottawa: Minister of Supply and Services Canada, 1981) ("McDonald Commission," Chair: David C. McDonald).

<sup>46</sup> *Ibid.*, vol. 2 at 687.

<sup>47</sup> M. Shepard, "Hearing into teens' role in terror case," *The Toronto Star* (January 15, 2007).

customs officer intercepted Ahmed Ressam, who used to live in Montreal, as he entered the U.S. with a rented car full of explosives. Ressam was planning to bomb the Los Angeles Airport on the advent of the new millennium. Although he was under CSIS surveillance, he left Canada to train in Afghanistan in 1998 and came back undetected in February 1999 carrying a passport under the name of Benni Antoine Norris. He prepared his terrorist plans unhampered by CSIS or any police force, and left for the United States, where he was arrested before accomplishing his attack. In its review of the Ressam affair, SIRC concluded that it saw "no evidence that it was a lack of vigilance on the part of the Service [CSIS] that contributed to Ressam's ability to escape detection after his return in 1999."<sup>48</sup> This assessment did nothing to dispel the belief in the U.S. that a culture of failure presides over the Canadian intelligence community and its partners in counter-terrorism. Although Ahmed Ressam was prevented from harming anyone in the United States, the impact on U.S. public opinion of his aborted attempt can be compared to the impact on the Canadian Indian community of the March 2005 acquittal of Malik and Bagri in the Air India trial. The Ressam fiasco may have driven Canadian counter-terrorist agencies to try to make up for this failure by becoming overly-aggressive. The Maher Arar affair lends some discomfiting evidence in this respect.

B. *The counter-terrorism assemblage.* The lion's share of the 2002 counter-terrorism money was not awarded to CSIS but to CSE. Part of CSE's mandate is to protect Canada's communications and information structure. CSIS now harbours an Information Operations Centre IOC, which stores information resulting from CSIS investigations of threats to Canada's critical information infrastructure. The IOC may encroach upon CSE's mandate and generate a turf battle. In the same way, the Integrated Threat Assessment Centre (ITAC) was created in July 2004 to transmit threat assessments quickly to decision makers. ITAC is a cooperative initiative where 11 Canadian agencies involved in counter-terrorism at the national, provincial or municipal level are assembled. Among its ITAC partners, CSIS is supposed to be the first among equals.<sup>49</sup> The current director of ITAC was appointed in July 2005 and is seconded from the RCMP. SIRC found the level of co-operation between CSIS and other

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<sup>48</sup> SIRC Annual Report 2002-03 at 6, 71.

<sup>49</sup> SIRC Annual Report 2005-06 at 9.

domestic agencies to be both appropriate and productive.<sup>50</sup> However, as noted before, SIRC has a tendency to downplay the frictions between agencies.

Making a splash in the war against terrorism is a big prize nowadays, as I found in the course of my research in policing in Quebec. Before 9/11, counter-terrorism intelligence was a responsibility of the *security* intelligence unit of the *Sûreté du Québec* (SQ, the Quebec provincial police). However, as soon as the counter-terrorism stakes were increased by 9/11, responsibility for collecting this kind of intelligence was transferred to the *criminal* intelligence unit of the SQ, with the strong backing of the Criminal Investigation Department (CID). Similarly, it is far from a foregone conclusion that the present counter-terrorism assemblage will perform as an integrated whole and that CSIS will succeed in asserting its leadership as the first among equals.

One final development within CSIS is difficult to assess because it is taking place informally. CSIS is a domestic intelligence agency, like its British counterpart, the Security Service (MI5<sup>51</sup>), and the Australian Security Intelligence Organisation (ASIO). A reading of CSIS and SIRC annual reports leaves no doubt that CSIS is becoming more deeply involved in collecting foreign intelligence and is increasing its number of Security Liaison Officers (SLOs). As long as there will be no formal recognition (for example, through legislation) of this unheralded push into foreign intelligence, we will not be able to measure its influence on the professional culture of CSIS.

#### 1.2.4 *The RCMP's evolution*

As I previously said, it is not so much the professional culture of the uniformed RCMP that is at stake as its attendant impact on its plainclothes investigators. The main focus in the RCMP from the 1980s to date lay in spearheading the community policing movement in Canada.<sup>52</sup> The meaning of community policing is disputed. Whatever it may be, it rests on police visibility and involves almost exclusively uniformed patrol

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<sup>50</sup> SIRC *Annual Report 2001-02* at 12.

<sup>51</sup> "MI5" (Military Intelligence section 5) was the name given to Britain's security service in 1916. MI5 was subsequently renamed the "Defence Security Service" (in 1929) and the "Security Service" (in 1931), the name it retains today. However, the Service is still often simply called MI5: <http://www.mi5.gov.uk/output/Page65.html>.

<sup>52</sup> A. Normandeau and B. Leighton, *A Vision of the Future of Policing in Canada: Police-Challenge 2000: Background Document* (Ottawa: Police and Security Branch, Ministry of the Solicitor General, 1990).



persons deployed in the field. There is a consensus among researchers that this movement widened the gap between patrol persons in uniform and plainclothes investigators. To that extent, the early embracing of community policing by the RCMP may not have enhanced the quality of its investigative performance in 1985.

Community policing evolved into problem-oriented policing, which implied the collection of data on community problems and their analysis according to the SARA method – Scanning, Analysis, Response and Assessment. Problem-oriented policing was only a step away from intelligence-led policing (ILP), which is increasingly the new police paradigm. However, the RCMP appeared to resist this paradigm. In a 2005 public talk, Giuliano Zaccardelli, then RCMP Commissioner, remarked that ILP “reeks of secret service, spy agency work – the capital “I” in “Intelligence.”<sup>53</sup> It should be mentioned that a federal commission of inquiry – the O’Connor inquiry – was at that time investigating the RCMP and the Commissioner for sharing with U.S. agencies] unverified intelligence on the alleged involvement of Canadian citizen Maher Arar and others in terrorism.<sup>54</sup> This may explain in part why Commissioner Zaccardelli distanced himself from ILP. It is also possible that he was expressing the traditional police bias favouring action over information.

As the Thacker Committee<sup>55</sup> noted, the RCMP always kept a stake in national security through its National Security Investigations Directorate (NSID) and National Security Investigations Sections (NSIS), and still took aggressive action against its targets. After 9/11, the RCMP boosted its involvement in national security and played the lead role in the 2006 arrest in Toronto of 17 persons allegedly involved in a bomb plot. In so doing, it apparently performed a “sting operation” whereby the suspects allegedly tried to buy three tonnes of ammonium nitrate from an RCMP infiltrator.<sup>56</sup>

There is an important conclusion to be drawn from the previous analyses: **Security intelligence agencies such as CSIS are much more susceptible to the volatile global political environment than are law**

<sup>53</sup> Giuliano Zaccardelli, Speaking notes for a presentation on intelligence-led policing at the Canadian Association of Chiefs of Police Conference, Ottawa, Ontario, August 23, 2005.

<sup>54</sup> Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar*, vol. 3 (Ottawa: Minister of Public Works and Government Services, 2006) (Chair: Dennis O’Connor).

<sup>55</sup> Canada, House of Commons, *In Flux but not in Crisis: Report of the Special Committee on the Review of the CSIS Act and the Security Offences Act* (Ottawa: Supply and Services Canada, 1990) at 103, 187 [Thacker Committee Report].

<sup>56</sup> J. Goddard, “Fertilizer usually sold just to farmers,” *The Toronto Star* (June 7, 2006) A6.

**enforcement agencies. Although crime varies, it will never disappear, and law enforcement forces will always be needed. In contrast, there was a time when security intelligence agencies may have believed that they were out of a mandate, and as a result made the necessary moves to survive. This sensitivity to the global political context is a crucial difference between police and national security agencies.**

## **2. MAJOR CONTRASTS BETWEEN SECURITY INTELLIGENCE AND POLICE ORGANIZATIONS**

I will follow a dual methodological approach in pursuing my discussion of the differences between the professional culture of law enforcement and security intelligence agencies. First, I discuss major and minor contrasts in culture through incidents that illustrate these contrasts. Second, I will offer a theoretical synthesis of the differences. The major sources of contrast that I want to examine are (1) competition; (2) mandates, from which stem the divergent needs of collecting security *intelligence* and of gathering *evidence* to support court proceedings; (3) the related issue of infiltration using human sources; (4) information analysis; and (5) the fight against transnational crimes.

### **2.1 Competition**

There is an undeniable difference between police forces and security intelligence agencies. The members of police forces have special powers of coercion stemming from their legal status as peace officers, and they are responsible for enforcing the law. Members of civilian intelligence agencies have no such powers. However, since security intelligence organizations are responsible for protecting national security and are also involved in protecting citizens against terrorist violence, they can be said to be *policing* agencies, although they are not police in the legal and institutional sense. The literature on policing culture generally agrees that such a culture rests on an entrenched dichotomy between the “in-group” and the “out-group.”<sup>57</sup> The McDonald Commission report went as far as comparing the RCMP to a “religious Order.”<sup>58</sup> The flip side of this dichotomy is *competition*. Policing agencies behave aggressively towards out-groups, including other policing agencies. Consequently,

<sup>57</sup> Janet Foster, “Police cultures” in Tim Newburn, ed., *Handbook of Policing* (Cullompton (Devon; UK), 2003) at 197; P.A.J. Waddington, “Police (canteen) sub-culture: an appreciation” in Tim Newburn, ed., *Policing: Key Readings* (Cullompton (Devon, UK): Willan Publishing, 2005) 364 at 379.

<sup>58</sup> Canada, Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security under the Law*, vol 2. (Ottawa: Minister of Supply and Services Canada, 1981) (“McDonald Commission,” Chair: David C. McDonald) at 689.

**the competition between CSIS, the RCMP and other law enforcement agencies is not in my view merely a derivative effect that can be explained by something else (for example, different mandates). It is a core feature embedded in the professional culture of policing agencies and one that generates its own effects. In brief, CSIS and the RCMP only needed to be policing agencies in their own right to compete against each other.**

In one of its early annual reports, SIRC observed that the term “healthy tension” was used to describe the relationship between CSIS and the RCMP, adding that it would even be healthier if it were less tense.<sup>59</sup> For instance, SIRC was “puzzled and disappointed” that it took six years to resolve the issue of access by CSIS to the Canadian Police Information Centre (CPIC), a database managed by the RCMP.<sup>60</sup> CSIS was granted partial access to CPIC only in 1990. Without taking into account any in-bred competition between policing agencies, the RCMP reluctance was indeed surprising. After all, CSIS was at the time essentially staffed with former colleagues. However, **the working relationship of CSIS with the RCMP is not only about facts but also about perceptions.** For instance, CSIS and the RCMP successfully concluded one counter-terrorism investigation that involved an “important friendly country.” Despite the ultimate success of the operation, SIRC was concerned that “the possible damage would lie in the insecurity felt in an important friendly country about the ability of CSIS and the RCMP to work together.”<sup>61</sup>

SIRC assessed the cooperation of CSIS with the RCMP in an inquiry conducted over two years (1997-1999). It concluded that the relationship could be characterized as one of “genuine and fruitful cooperation,” with two exceptions: RCMP use of CSIS intelligence in criminal proceedings and CSIS responsibility in the area of transnational crime.<sup>62</sup> However, SIRC added an important reservation to this overall assessment by declaring that “incidents that came to our attention which in part gave rise to our study of the CSIS-RCMP relationship indicate that there *may be less to be sanguine about at the regional level.*”<sup>63</sup> There are many instances of those regional difficulties. An MOU between CSIS and the SQ and

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<sup>59</sup> SIRC *Annual Report 1986-87* at 27.

<sup>60</sup> SIRC *Annual Report 1988-89* at 16.

<sup>61</sup> SIRC *Annual Report 1989-90* at 38.

<sup>62</sup> SIRC *Annual Report 1998-99* at 24.

<sup>63</sup> SIRC *Annual Report 1997-98* at 30, referring to SIRC Report #101 (CSIS Cooperation with the Royal Canadian Mounted Police – Part I) [emphasis added].

Quebec municipal forces was signed only in 1992, eight years after the creation of CSIS. In one unidentified region, the relations of CSIS with a law enforcement agency were so tense that in one case the police used subpoena powers to compel the attendance of CSIS officers as witnesses at a trial. In another case, the same law enforcement agency **alleged criminal wrongdoing on the part of CSIS** to get a search warrant to obtain a CSIS document from a third federal government agency.<sup>64</sup>

Although it has regional offices and liaison officers, CSIS is highly centralized, whereas the RCMP's operational structure is decentralized and dispersed among the provinces. In all provinces except Ontario and Quebec, an RCMP division enters into an agreement with the provincial government and operates with a margin of independence from RCMP headquarters. Problems that may be ironed out at the headquarters level through MOUs keep arising at the regional level, either with an RCMP detachment or a local law enforcement agency. We must recall that the Air India investigation was in great part conducted at the local level in British Columbia.

## 2.2 Preventive intelligence versus prosecutorial evidence

We previously saw that there were two areas of concern about collaboration between CSIS and the RCMP: the disclosure of CSIS intelligence in public criminal court proceedings and the self-attributed responsibilities of CSIS in the area of transnational crime. I will now address the first of these concerns. Briefly stated, the mandate of CSIS is to collect and disseminate information about threats to the security of Canada, using sources and investigative methods which must be protected in the interests of national security. The RCMP's mandate is to perform the attendant police functions – including mustering incriminating evidence – in relation to those threats. This framing of the respective responsibilities goes back to the Mackenzie Commission.<sup>65</sup> The Mackenzie Commission report emphasized the clear difference between the police and the security intelligence mandates.<sup>66</sup> This emphasis was carried over to the McDonald Commission and has never been questioned to this day.

These two mandates are complementary, as the September 2006 MOU stated, but in reality they result in clashes over the issue of public

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<sup>64</sup> *Ibid.*, referring to SIRC Report #103 (A Problematic Case of Inter-agency Cooperation) at 32-34.

<sup>65</sup> Canada, Royal Commission on Security, *Abridged Report of the Royal Commission on Security* (Ottawa: Queen's Printer, 1969) (the "Mackenzie Commission") at para 55.

<sup>66</sup> *Ibid.* at para. 57.

disclosure by the police – by the Crown – of the sources, methods and covert intelligence of CSIS to secure a conviction. This source of tension has been described as “unavoidable.”<sup>67</sup> Since 1969, not one government body that examined the relations between CSIS and the RCMP, including the current Air India Inquiry (in its terms of reference),<sup>68</sup> has failed to refer explicitly to sources of tension. The tension became more acute after the Supreme Court of Canada’s *Stinchcombe*<sup>69</sup> ruling on disclosure of Crown evidence to the defence. There are opinions to the effect that these disclosure obligations have become intractable problems. For example, in its *Annual Report 1998-99*, SIRC argued that, “[t]here is no obvious solution to this conundrum within the existing Memorandum of Understanding or under existing legislation. While the potential impact of changing the law is open to debate, what is not in doubt in our opinion is the potential for damage to national security operations should the situation be left unchanged.”<sup>70</sup>

Issues surrounding the public disclosure of CSIS intelligence can be separated into at least four distinct categories: (1) the disclosure of CSIS files; (2) the transmission to law enforcement agencies of original material (letters, documents, audiotapes, videotapes, etc.); (3) the public testimony in court of CSIS operatives; (4) the disclosure of the identity of CSIS sources and testimony in public. The last issue is the most problematic.<sup>71</sup> According to my own experience as director of research of a commission of inquiry that addressed the issue of security service informants (the Keable Commission),<sup>72</sup> the circumstances in which an informant is heard and the measures to protect an informant’s identity in court proceedings make no difference. The informant (also known as a ‘human source’ in police parlance) will immediately be identified by any defence lawyer worth his mettle as soon as he or she comes forward.

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<sup>67</sup> SIRC *Annual Report 1989-90* at 16; *Annual Report 1989-99* at 41.

<sup>68</sup> In addition to the Mackenzie and McDonald Commissions, several other bodies addressed this issue: the Special Committee of the Senate on the Canadian Security Intelligence Service and its report, *A Delicate Balance: A Security Intelligence Service in a Democratic Society*, *supra* note 10; Independent Advisory Team on the Canadian Security Intelligence Service, *People and Process in Transition*, *supra* note 40 at 5; *In Flux but not in Crisis: Report of the Special Committee on the Review of the CSIS Act and the Security Offences Act*, *supra* note 55 at 15; SIRC *Annual Report 1987-88* at 32; *Annual Report 1989-90* at 5; and, more generally, SIRC *Annual Report 1997-98* and *Annual Report 1998-99*.

<sup>69</sup> *R. v. Stinchcombe*, [1991] 3 S.C.R. 326.

<sup>70</sup> SIRC *Annual Report 1998-99* at 22.

<sup>71</sup> *Ibid.* at 21.

<sup>72</sup> Québec, *Rapport de la Commission sur des Opérations Policières en Territoire Québécois* [Keable Report] (Québec: Ministère des Communications, 1981).

In order to show what is at issue in the disclosure of an informant's identity, I will review the legal proceedings in the case of Santokh Singh Khela and Kashmir Singh Dhillon.

- 1. 1986:** Santokh Khela and Kashmir Dhillon, members of Montreal Babbar Khalsa (an extremist Sikh organization), were convicted of plotting to bomb an Air India jet in New York. The Crown's case rested on the testimony of an informant claiming to have been paid \$8,000 to blow up a jet. This informant – "Billy Joe" – was originally handled by the Quebec Provincial Police (QPP), who were co-operating with the RCMP and the FBI on this case. According to the QPP and RCMP handlers of Billy Joe, the accused wanted to blow up a plane in New York. They were "stung" by being put in contact with an FBI agent who posed as a bomb expert ready to contract to blow up a plane. The FBI agent eventually got them arrested. The accused said that the money was paid to Billy Joe to procure a stolen car (It was also claimed that it was paid for Billy Joe to kill an Indian journalist by the name of Hayer).<sup>73</sup> Crucially, Billy Joe never testified in the 1986 proceedings.
- 2. First appeal.** Khela and Dhillon appealed their convictions to the Quebec Court of Appeal. On December 9, 1991, their appeal was granted on the ground that "the trial judge erred in law in twice refusing to order the witness known as Billy Joe to be produced to testify at the trial."<sup>74</sup> A new trial was ordered.
- 3. Second trial.** A second trial was held in 1992. The charges were stayed by Steinberg J. of the Quebec Superior Court because the Crown failed to meet the disclosure requirements formulated by the Quebec Court of Appeal in 1991. In addition, the informant's testimony did not satisfy the *Stinchcombe* disclosure requirements: Billy Joe testified outside the courtroom wearing a hood; the interview could not be taped and there was no court reporter; even the identity of the person wearing the hood was put in doubt by the defence. Both accused were freed after serving nearly six years in prison.

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<sup>73</sup> Bolan, *Loss of Faith: How the Air India Bombers Got Away with Murder*, *supra* note 21 at 147.

<sup>74</sup> *R. v. Khela* (1991), 68 C.C.C. (3d) 81.

4. **Second appeal (to the Quebec Court of Appeal).** The Crown appealed Steinberg J.'s stay of proceedings to the Quebec Court of Appeal. The Court of Appeal ruled against the decision to stay the proceedings.<sup>75</sup>
5. **Third appeal (to the Supreme Court of Canada).** The defence appealed the Quebec Court of Appeal ruling to the Supreme Court of Canada. On November 16, 1995, the Supreme Court ruled that "the Crown totally failed to make full disclosure *prior to trial* in relation to Billy Joe" as required by the Court of Appeal in deciding the appeal of 1991, and that the Crown was in breach of section 7 of the *Charter*. The Supreme Court concluded that the terms of disclosure set by the Quebec Court of Appeal in its 1991 decision "accord with the decision in *Stinchcombe*."<sup>76</sup> The Supreme Court ordered another new trial.
6. **Third trial.** On the basis of a very muddled situation in respect of the non-disclosure of police notes relating to their informant Billy Joe the defence once more presented a claim for a stay of proceedings. Martin J., the trial judge, ordered a permanent stay of proceedings in what the Quebec Court of Appeal later called "a very detailed and articulate judgment."<sup>77</sup>
7. **Fourth appeal (to Quebec Court of Appeal).** The 1996 decision of Martin J. was appealed to the Quebec Court of Appeal, which ruled for a third time in this case. Proulx J.A. dismissed the appeal using unusually strong language: "This case, in my opinion, has reached a stage where, as Martin J. concluded, the serious prejudice resulting from the failure to disclose is not "remediable"; using here the approach taken by the Supreme Court (*R. v. O'Connor*, supra). To put it bluntly, "enough is enough."<sup>78</sup>

This discussion shows first of all that the stakes in the intelligence versus evidence issue are quite high. Criminal proceedings that use evidence given by an informant against alleged terrorists can be unremitting, with massive economic and social costs for all parties. The proceedings in this case lasted for more than twelve years. Taking into account the costs of

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<sup>75</sup> *R. v. Khela* (1994), 92 C.C.C. (3d) 81.

<sup>76</sup> *R. v. Khela*, [1995] 4 S.C.R. 201 at 203.

<sup>77</sup> Unreported judgment 9 August, 1996.

<sup>78</sup> *R. v. Khela*, (1998) 126 C.C.C. (3d) 341.

the police investigation, the police involvement in the preparation of the case, the testimony of the police witnesses and the informant, and the court proceedings in three trials and four appeals at all levels of the criminal justice system, including the Supreme Court of Canada, the whole process cost huge amounts of taxpayer money, to little avail. All parties implicated actually lost. The defendants spent six years in jail before their acquittal. The police and the Crown did not get the convictions they were seeking. The case also demonstrated that the *Stinchcombe* ruling placed the confidentiality of the identity of informants in jeopardy, increasing the gap between law enforcement organizations and agencies dedicated to the collection of intelligence.

### 2.3 Infiltration by human sources

SIRC began its special 1994 report<sup>79</sup> on the infiltration of the Heritage Front by a human source in the pay of CSIS with a C.S. Lewis quote: "Dream furniture is the only kind on which you never stub your toes or bang your knee." The handling of human sources is the field of policing where the difference between dream and real informants is the greatest.<sup>80</sup> I will limit my discussion of the complex and unruly topic to five points. Although undercover police and security intelligence agents play an important role, I will make my points exclusively about informants who are not regular members of policing agencies. This is because I consider discussing these informants is more relevant for this Commission's mandate than is discussing the work of undercover police.

A. *The various uses of informants:* The infiltration of organizations by informants (human sources) is the most intrusive of investigative techniques. Whether they answer to police or to intelligence agents, paid human sources have one thing in common: they enjoy a covert and limited licence to commit crimes to penetrate deeper into a criminal or terrorist organization and to protect their cover.<sup>81</sup> SIRC drew a crucial distinction between "passive" and (criminally) "active" sources, and further argued that "if CSIS were to use only "passive" sources . . . the quality of the information available to the intelligence community and to police

<sup>79</sup> Security Intelligence Review Committee, *The Heritage Front Affair*, *supra* note 11.

<sup>80</sup> Jean-Paul Brodeur, "Undercover Policing in Canada: A Study of its Consequences" in C. Fijnaut and G.T. Marx, eds., *Police Surveillance in Comparative Perspective* (The Hague: Kluwer Law International, 1995).

<sup>81</sup> *Ibid.* at 89; Peter Reuter *Disorganized Crime: The Economics of the Visible Hand* (Cambridge: MIT Press, 1983); Jean-Paul Brodeur "Undercover Policing in Canada: A Study of its Consequences" in C. Fijnaut and G.T. Marx, eds. *Police Surveillance in Comparative Perspective* (The Hague: Kluwer Law International, 1995) at 89.



forces would be considerably less useful at best or useless at worst. *Most good sources are active.*<sup>82</sup> Because of their “activity,” human sources are unavoidably suspected of entrapping their targets when they are acting on behalf of the police, or of being *agents provocateurs* if employed by a intelligence security agency. The police usually make short-term use of their informants, perform sting operations<sup>83</sup> with their assistance, and have no qualms about calling informants to testify in court, since governments have witness protection programs. Security intelligence agencies such as CSIS infrequently mount sting operations, since they have no law enforcement mandate; they try to use sources for as long as possible and go to great lengths to protect their identity.

*B. Human sources and the courts:* Because of their involvement in criminal activities and their police or security intelligence stipend, human sources have over the years lost a significant amount of credibility in court. It is now difficult to secure a conviction based solely on the testimony of an informant. This distrust extends to witnesses who were linked through some form of “activity” (for example, an amorous liaison) to a person being prosecuted.

*C. Cultures of containment and of interruption:* I have already quoted SIRC’s 1994 pronouncement that most good sources had to be active. Much earlier, SIRC had addressed the problem of intelligence agencies closing their eyes to a lesser crime in order to keep them open to potentially bigger crimes. SIRC first stated its agreement with the view of the McDonald Commission that a security intelligence agency had a duty to tell the police what it knew about criminal activities. However, SIRC also acknowledged exceptions to this rule “when a police investigation, and perhaps evidence at a subsequent trial, would irremediably compromise a vital security operation.”<sup>84</sup> This takes us to the heart of the professional culture of a security service, whether police or civilian, as it was described by the Québec Keable Commission, of which I was director of research.<sup>85</sup>

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<sup>82</sup> Security Intelligence Review Committee, *The Heritage Front Affair*, *supra* note 11 at section 13.11 [emphasis added].

<sup>83</sup> A sting operation uses informants and also undercover agents to facilitate the perpetration of a crime in a context designed to record evidence for the prosecution. Classic examples involve police informants or police undercover agents posing as drug buyers and then arresting the sellers *in flagrante delicto*. The 1986 case involving Khela and Dhillon was an unusual operation involving a source (“Billy Joe”) and a FBI undercover agent (Frank Miele) posing as an explosives expert ready to bomb a plane for Khela and Dhillon. If the 17 persons arrested in 2006 for an alleged Toronto terrorist plot did buy ammonium nitrate from an RCMP source, as claimed by the media, this would make the police operation at least in part a sting operation.

<sup>84</sup> SIRC *Annual Report 1986-87* at 26.

<sup>85</sup> See also Jean-Paul Brodeur, “Legitimizing Police Deviance” in Clifford Shearing, ed., *Organizational Police Deviance* (Toronto: Butterworths, 1981) at 127.

Between November 1970 and 1973, the counter-terrorist unit of the Montreal police transformed the *Front de Libération du Québec* (FLQ) into a police colony by riddling it with police informants. The counter-terrorist unit limited its actions to monitoring lesser crimes (for example, fire-bombing) while using its informants to steer the group in a direction where it eventually stopped being a real threat. More than twenty years later, SIRC rediscovered this security service culture of containment: “We are also cognizant of the danger that in destroying one group, as opposed to watching it, another one which is worse may be created.”<sup>86</sup> In contrast, the police build unrelated individual cases to interrupt criminal activities. Such interruptions are sometimes long-lasting and even final. In many cases, the interruption of criminal activity is only temporary.

D. *Means over ends.* Throughout his work the great police reformer Herman Goldstein criticized what he called the “means over ends syndrome.” Agencies suffering from this syndrome give priority to “means” that are germane to achieving organizational ends – for instance, crackdowns on small-time drug-traffickers that boost the police statistics, but have no effect on the drug trade itself – over its external “ends” of providing an efficient service to society (for example, protection from harm). There is a risk that the use of long-term infiltration may fall prey to the means over ends syndrome. Take the case of the CSIS officer who claimed in *The Globe and Mail* to have destroyed audiotapes that may have been helpful to the Air India investigation in order to protect the identity of his informants. Assuming that the CSIS officer was being truthful, his loyalty to his informants was in a way laudable. However, the bombing of Air India Flight 182 and the explosion at Narita Airport resulted in 331 casualties and was one of the worst terrorist attacks to have occurred worldwide – certainly the worst in Canadian history. In those circumstances, giving priority to the protection of one’s informants over solving this monstrous crime is tantamount to losing sight of the point that infiltration is a means towards the end of protecting the nation and its people. Infiltration and the protection of informants is not an end for its own sake. **In my view, there needs to be a clear policy to cure intelligence agencies of the means over ends syndrome in the practice of infiltration and in the handling of informants.** The long-term containment argument is not valid in all circumstances, and neither is the need to protect informants from retaliation, including death. If law enforcement agencies succeed in protecting informants who testify in public criminal proceedings through

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<sup>86</sup> SIRC, *The Heritage Front Affair*, *supra* note 11 at section 13.11.

witness protection programs, I don't see why security intelligence agencies could not.<sup>87</sup>

E. *Informant asymmetry*. It cannot be assumed that an informant answers to only one handler or is active in only one criminal field. In my research on informants for the Quebec Keable Commission, I came across informants who were "feeding" two or more "handlers" or "control officers" at the same time. These handlers belong to different police forces, and some informants were expert at pitting their handlers against each other for the informant's own benefit. In other cases, a person may have been very good at compartmentalization – for example, being a drug informant while at the same time pursuing terrorist activities. Such an informant might even enjoy the protection of his narcotics handler from potentially being arrested by the counterterrorism unit. Research into such issues **is impossible to pursue from open sources. Only the Commission can follow up on these issues.**

## 2.4 Analysis of information

In the parlance of the intelligence community, intelligence is a product that is obtained by applying techniques of analysis to covert or open source information. I attempted to show in section 1.2.1 of this paper that the former members of the RCMP Security Service who staffed CSIS in its first years were still imbued with a police culture that gave priority to operations over threat assessment and that also gave priority to short-term tactical tips over long-term strategic intelligence. In addition to SIRC's efforts, it took the recommendations of Osbaldeston's IAT to turn things around. I also referred to U.S. Senator Richard C. Shelby's views on the failure to prevent 9/11, views which despaired of the FBI's ability to produce security intelligence and which led to a proposal to replace the FBI with another agency patterned on the British MI5.

The RCMP and CSIS embarked on a common intelligence venture in March 1996. News of the venture was leaked to the media in 1999. This project, called "Sidewinder," was to measure the extent of China's economic espionage and assess the harm inflicted on Canadian society

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87 The British actually succeeded in protecting their "supergrasses," informants who testified against indicted IRA terrorists in criminal proceedings: See Tony Gifford, *Supergrasses: the use of accomplice evidence in Northern Ireland* (London: Cobden Trust, 1984); Amnesty International, *United Kingdom: Northern Ireland: killings by security forces and "supergrass" trials* (London (UK): Amnesty International, 1988); Steven Greer, *Supergrasses: A Study in Anti-Terrorist Law Enforcement in Northern Ireland* (Oxford: Oxford University Press, 1995).

by Chinese criminal gangs (“Triads”). The project was modest at the beginning, involving two analysts from the RCMP and two from CSIS. However, the project generated a feud that embroiled high-ranking officers of both agencies. Although the project started in March 1996, it was apparently in limbo until the RCMP analysts issued a first draft of the report in June 1997. CSIS reviewed this first draft, and the Director General of RAP (Requirements, Analysis & Production Branch) concluded that the report’s findings were “based on innuendo, and unsupported by facts.”<sup>88</sup> The RCMP/CSIS team resumed work and the conflict escalated. In May 1998, it was the RCMP’s turn to complain about a number of factual errors in the CSIS revised draft. In December 1998, the Deputy Director General of RAP wrote to the RCMP Officer in Charge, again pointing to innuendo in the then-current draft report and saying that CSIS did not concur with the inclusion of such items in the report. She wrote, “We do not have factual evidence of our suspicions and the Service is uncomfortable with the obvious challenges that could be raised by the readership.”<sup>89</sup> Despite these travails, both agencies finally agreed to approve a final version of the Sidewinder report in January 1999. SIRC studied the first RCMP draft of the report and found it to be “deeply flawed and unpersuasive . . . . Whole sections employ leaps of logic and non-sequiturs to the point of incoherence; the paper is rich with the language of scare-mongering and conspiracy theory. Exemplifying the report’s general lack of rigour are gross syntactical, grammatical and spelling errors too numerous to count.”<sup>90</sup> SIRC commended the Service for implementing standards of the highest possible quality in producing threat assessments. In customary euphemistic fashion, it concluded that Project Sidewinder had inflicted no lasting damage to the broader CSIS-RCMP working relationship. Indeed, considered in isolation, none of the incidents reviewed by SIRC was ever serious enough to reverberate throughout both agencies and pit them against each other. However, it is an open question whether the sum of these incidents undermined that working relationship.

It should be asked whether SIRC’s severe judgment on the work of RCMP analysts was biased in favour of CSIS. Upon reading the O’Connor reports about the Maher Arar affair, I am persuaded not only that SIRC was not biased against the RCMP, but that the RCMP should have taken stock of SIRC’s assessment. The O’Connor reports fault the RCMP for sharing with its U.S. partners information about Maher Arar that was both inaccurate

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<sup>88</sup> SIRC *Annual Report 1999-2000* at 5, referring to SIRC’s Report #125 (at 3-9), its analysis of RCMP-CSIS relations during Project Sidewinder.

<sup>89</sup> SIRC Report #125, *ibid.* at 6.

<sup>90</sup> *Ibid.*

and incendiary.<sup>91</sup> On the other hand, the O'Connor report commended CSIS for the caution and precision of its threat assessment.<sup>92</sup>

## 2.5 Transnational crime

The involvement of CSIS in the fight against transnational crime seems to have been a transitory investment of the Service. It was not part of CSIS operations during the Cold War and does not seem to be part of its priorities after 9/11. I will briefly discuss the issue because it is mentioned by SIRC as one of the two areas of friction with the RCMP, the other being the intelligence versus evidence conundrum discussed above.

Apart from RAP, security clearances and immigration screening activities, CSIS performs the following operations: targeting, special investigations, surveillance (physical and electronic), getting warrants and acting upon them, community interviews, and sensitive investigations.<sup>93</sup> Most of these activities share common features with police investigations and have the potential to encroach upon police responsibilities. In 1993, there was some concern in government that certain aspects of transnational organized crime were threatening the social fabric and economic security of Canada. Since protecting Canada's national security was at the core of the mandate of CSIS, the Service followed up on this governmental concern and set up a Transnational Criminal Activities Unit within its CI (Counter-Intelligence) Branch in 1995, thus distinguishing transnational criminal activity from transnational terrorist threats.<sup>94</sup> This was perceived by SIRC as "a significant departure from the Service's traditional area of responsibility."<sup>95</sup> This move by CSIS was in line with the re-orientation of security intelligence throughout the Western world, with most agencies seeking a new *raison d'être* after the end of the Cold War.<sup>96</sup>

CSIS claimed that its involvement in this domain was limited to collecting strategic intelligence, and that it left tactical law enforcement activities to the police. The police felt that the abstract distinction between strategy and tactics did not provide a clear standard to separate police and

<sup>91</sup> *Report of the Events Relating to Maher Arar*, *supra* note 54 at vol. III, chapter I, section 5.1.5.3. See also vol. III, chapter III, section 2.4.

<sup>92</sup> *Ibid.* at vol. III, chapter III, section 7.6.

<sup>93</sup> Sensitive investigations are investigations of persons who are members of a sensitive institution: SIRC *Annual Report 1997-98*, referring to SIRC Report #97 (Annual Audit of CSIS Activities in a Region of Canada) SIRC, 1997-98: report 97).

<sup>94</sup> SIRC *Annual Report 1995-96* at 15.

<sup>95</sup> SIRC *Annual Report 1998-99* at 5.

<sup>96</sup> Jean-Paul Brodeur "Cops and spooks: the Uneasy Partnership" in Tim Newburn ed. *Policing: Key Readings* (Cullompton (Devon) Willan Publishing, 2005)

security intelligence responsibilities. It was also obvious that CSIS agents did not have the training and knowledge to operate in a field as complex as money-laundering, where the RCMP had scored notable victories (for example, by operating a fake money-changing office in Montreal where the RCMP monitored criminals laundering money). In addition to these two problems, the familiar regional quarrels over the denial of access to CSIS intelligence to local police agencies began to flare. SIRC concluded its assessment of the incursion by CSIS into the field of transnational crime in an unusually critical tone, suggesting that the Service “may not be equipped either by tradition or by training to take on the task.”<sup>97</sup>

**The upshot of this discussion is that the friction between CSIS and the police establishment is a two-way street. The first problem lies in denying access to one’s turf and files to another party (defence); the reverse problem lies in aggressively asserting one’s stake in the other party’s traditional responsibilities (offence).**

### **3. MINOR CONTRASTS BETWEEN SECURITY INTELLIGENCE AND POLICE ORGANIZATIONS**

The word “minor” here does not mean that the contrasts discussed are of lesser importance. However, they have a more limited scope. I shall address the issues of (1) recruitment; (2) training; (3) internationalization; (4) human rights; and (5) accountability. First, however, I address the question of ethnocentricity, a common trait of all police and security intelligence organizations.

#### **3.1 Ethnocentricity**

Ethnocentricity is a strong feature of all policing organizations. They have been criticized repeatedly for practicing racial and ethnic discrimination. Police sociologists such as Egon Bittner and Robert Reiner have stressed that one of the original features of the unofficial police mandate is the policing of immigrants and foreigners. On a less dramatic level, policing organizations such as the RCMP have had difficulty respecting Canada’s linguistic duality and implementing policies that promoted the rights of their French-speaking minority members. When CSIS came into being in 1984, it was staffed by ex-members of the RCMP Security Service. The situation with bilingualism and relations with its French-speaking

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<sup>97</sup> SIRC *Annual Report 1998-99* at 10.

members was so tense that it spurred SIRC to table a special report to remedy the situation.<sup>98</sup>

Notwithstanding the perennial Canadian issue of bilingualism, ethnocentricity is a grievous impediment in the struggle against terrorism for several reasons:

- (1) CSIS had no translator who could render in English the conversations of Sikh suspects intercepted through wiretaps, causing delays of as much as six weeks in obtaining access to this information at the beginning of the Air India investigation.<sup>99</sup> The dearth of competent translators in the U.S. intelligence community has been lamented in all reports that examined the 9/11 tragedy;
- (2) The almost total absence of members from ethnic minorities in CSIS or RCMP national security units makes it almost impossible to perform undercover work and to infiltrate home-grown terrorist networks;
- (3) The less that policing agencies try to be representative in their recruitment policies of the general makeup of the Canadian population, the greater their vulnerability becomes to accusations of external ethnic profiling;<sup>100</sup>
- (4) The screening of immigrants, traditionally a low-prestige occupation at CSIS,<sup>101</sup> is now a task of crucial importance that cannot be adequately performed by an ethnocentric agency.

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<sup>98</sup> Security Intelligence Review Committee, *Closing the Gaps: Official Languages and Staff Relations in the Canadian Security Intelligence Service* (Ottawa: Minister of Supply and Services Canada, 1987).

<sup>99</sup> Bolan, *Loss of Faith: How the Air India Bombers Got Away with Murder*, *supra* note 21 at 72-73. (Bolan, 2005: 72-73).

<sup>100</sup> "According to Aly Hindy of the Salaheddin Islamic Centre, Mr. Ahmad blamed constant spying by CSIS for forcing him into criminal activity." Colin Freeze, "How the police watched the plan unfold," *The Globe and Mail* (June 7, 2006) A8 Even if they sound spurious to the majority of Canadians, such accusations about spying find an audience among ethnic minorities. One of the targets of the so-called 'Toronto bomb plotters' was allegedly the Toronto office of CSIS.

<sup>101</sup> Having given a course on terrorism at the CSIS academy, I was invited to the graduation ceremony of the new recruits. It was announced at this graduation celebration to which CSIS unit a recruit was appointed. The frustration of the new officers appointed to immigration screening was quite obvious (CT and CI were the prized appointment).

### 3.2 Recruitment

When it came into being in July 1984, CSIS was first staffed with former members of the RCMP Security Service, 95 per cent of whom had opted to join the new agency. They brought with them a *hybrid* culture. Part of this culture was the RCMP culture of a para-military police force. They also brought with them something specific to the RCMP Security Service, which the McDonald Commission described as “institutionalized wrongdoing.”<sup>102</sup> The initial recruitment problem was not that CSIS was staffed in this way – there was no other option than to admit the former members of the RCMP Security Service – but that its recruitment policy **kept on** favouring recruits with a police background, recruits who were then directly integrated into CSIS without the benefit of additional training.

Following SIRC’s energetic action and the Osbaldeston IAT Report, CSIS embarked on a recruitment campaign in 1989 and received 8,447 applications, 1,116 of which were judged to have high potential.<sup>103</sup> However, despite the IAT Report’s recommendation for an intensive program of interdisciplinary recruitment aimed at balancing the skills mix and representation of women, francophones and minorities in the Service,<sup>104</sup> the recruitment was still biased in favour of anglophone white males. Recruitment was also lacking in its balancing of skills. All new applicants had to have a university degree. However, the preferred degree was in political science, with the result that the skills mix advocated by the IAT Report was not achieved.

Discrimination showed itself in two ways. The first was the obligation imposed on all new recruits to submit to a polygraph test to be admitted into the Service. Ex-members of the RCMP Security Service were exempted from this test. SIRC opposed relentlessly – and apparently still does – the use of the polygraph on two grounds: its known unreliability (once more, recently acknowledged by the FBI)<sup>105</sup> and the use of the test to question applicants, not only about their loyalty to Canada and the agency, but also about their “lifestyle.” The issue of lifestyle had an impact on the profile of

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<sup>102</sup> Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security under the Law*, supra note 58, vol. I at 95ff; see also Cl  roux, *Official Secrets: The Story behind the Canadian Security Intelligence Service*, supra note 9 at 31ff.

<sup>103</sup> SIRC *Annual Report 1989-90* at 9.

<sup>104</sup> Independent Advisory Team on the Canadian Security Intelligence Service, *People and Process in Transition*, supra note 40 at 16.

<sup>105</sup> U.S., National Research Council, supra note 3.



the candidates identified as having a high potential. Judging from those graduate students I knew to have applied to CSIS, the required profile was one of conformity, if not of conformism. The good candidate would perform well on all indicators, without showing characteristics that stood out. According to the latest information from SIRC and CSIS, lifestyle polygraph tests are no longer used.

I have already referred to the second ground of discrimination. The second-rate status afforded to civilian analysts within CSIS – and within all police forces – was denounced in the 1981 McDonald Commission report, yet endured in 1999. **In my opinion, the Commission should be concerned about whether this has been remedied. It is inconsistent to stress the importance of rigorous analysis and yet to discriminate against those who provide that analysis by limiting their career options. It is the best way to keep the best away.**

### 3.3 Training

Training is one of the most vital instruments for imparting a professional culture to members joining an organization. Unfortunately, it is difficult to speak in an informed manner about CSIS training, since very limited information is available through open sources about training. For instance, the CSIS web site says nothing on the topic.

However, the following is apparent. First, an uphill battle had to be fought to convince CSIS of the need to train its intelligence officers. The Stephenson Academy was closed in 1987. This battle was won and the academy reopened. CSIS recruits are now exposed to a training curriculum that extends over several years.

Second, CSIS had to divest itself of the militaristic training that all RCMP recruits had to undergo. This kind of drilling rested on the premise that disciplining the body was the first step to fostering the identification of the newcomer with the organization.<sup>106</sup> As far as I can see, this aspect of training was suppressed by CSIS. I gave a course on terrorism at the CSIS Academy. I enjoyed complete freedom about the content of my lectures, and there was nothing stilted in the atmosphere in the classes. The only feature different from my normal teaching environment was the presence of a seasoned CSIS agent at the lectures. The agent joined freely in the discussion. I found this to be a positive aspect of the training.

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<sup>106</sup> Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Second Report: Freedom and Security under the Law*, supra note 58, vol. II at 708.

Needless to say, **the Commission should, in my view, exercise its powers of investigation and go deeper into this crucial issue of training.**

### 3.4 Internationalization

I previously referred to CSIS setting up the Transnational Criminal Activities Unit in 1995-96. This occurred within the framework of an increasing number of international initiatives on several fronts. CSIS was created in 1984 as a domestic security intelligence agency without regard for the fact that most Western democracies with a domestic intelligence agency also had a foreign intelligence agency. In the present context of globalization, the line separating domestic and foreign intelligence is blurred, and the protection of national security requires both types of intelligence. SIRC had criticized CSIS quite early in its history saying that, "It seemed to us that information supplied by friendly foreign intelligence services might too easily be accepted by CSIS at face value."<sup>107</sup> CSIS responded by increasing the number of its international arrangements. As of March 1996, the Service had a total of 202 arrangements with 123 countries and three international organizations. CSIS declared that, "[M]any of our security intelligence threats originate overseas . . . . Given the diversity of the changes in the global security environment, a major challenge for the Service is to help prevent these conflicts from becoming Canadian domestic security problems."<sup>108</sup> To achieve this goal of prevention, CSIS increased the number of Security Liaison Officers posted to foreign countries, despite the difficult working conditions they faced abroad.<sup>109</sup> As permitted by section 16 of the *Canadian Security Intelligence Service Act (CSIS Act)*, CSIS is now collecting foreign intelligence for the Minister of Foreign Affairs and for the Minister of National Defence.<sup>110</sup> The RCMP also operates at the international level in transnational investigations and by assisting in the training of police forces in developing countries. However, the international vocation of the RCMP is not as explicit and potentially wide-ranging as that of CSIS.

Internationalization has obvious implications for the occupational and organizational culture of an agency. First, as I have stressed, the custom in Western democracies is to have two separate security intelligence agencies, one operating within the country and another operating

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<sup>107</sup> SIRC *Annual Report 1986-87* at 23.

<sup>108</sup> Canadian Security Intelligence Service, *1997 Public Report*, Part I.

<sup>109</sup> SIRC *Annual Report 2000-2001* at 5-6.

<sup>110</sup> *Ibid.* at 26ff; SIRC *Annual Report 2001-2002* at 76ff.

abroad. If the present trend persists, CSIS may become *de facto* a security intelligence agency qualifying as **both a domestic and a foreign-oriented agency**. The professional culture of such an agency is bound to differ from the current culture of CSIS. If for all practical purposes CSIS becomes a domestic/foreign security intelligence agency, it will harbour three layers of professional culture: (1) the remnant of a police culture (for example, one that still discriminates between officers of the Service and “civilian analysts”); (2) the dominant domestic security intelligence culture and the attendant frictions with law enforcement agencies; and (3) the imported foreign intelligence culture. This multi-layering of various professional cultures may disorient the members of the Service. Second, and on a more positive note, it is to be expected that the Service’s growing international commitment will further loosen the “in-group/out-group” dichotomy. Finally, the difference between Canada and its partners must not be obliterated to the point that the Canadian national interest would be conflated with the interests of Canada’s friendly partners. Some twenty years ago, SIRC issued the following warning to CSIS: “[W]e sensed that CSIS might be too quick to accept the foreign policy underpinnings of this information [provided by friendly foreign intelligence services] instead of recasting it in terms of Canadian policy . . . .”<sup>111</sup> This warning remains relevant today, particularly in the light of the O’Connor report on the Maher Arar affair.

### 3.5 Human Rights

Developing and reinforcing a culture favourable to respecting human rights is particularly acute when it comes to cooperating with foreign agencies. CSIS was created to get rid of the RCMP Security Service culture of “institutionalized wrongdoing” that the McDonald Commission found to be prevalent. An array of mechanisms – a lessening of legal powers, judicial control, ministerial and sub-ministerial directives, an Inspector General, a review committee – was put in place to prevent CSIS from drifting into the same organizational territory as the former RCMP Security Service. Despite individual complaints (particularly about security clearance and immigration screening) and some unwelcome incidents, these mechanisms have worked on the whole, and it cannot be claimed that CSIS has become a clone of the RCMP Security Service in its approach to the human rights of Canadians and others living in Canada.

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<sup>111</sup> SIRC *Annual Report 1986-87* at 23.

The internationalization of the activities of CSIS called for a new vigilance. Although one would wish for an ideal world where the Service's foreign contacts would all have satisfactory human rights records, the reality is that many do not, and CSIS still has to deal with them to fulfill its duties.<sup>112</sup> SIRC revisited this issue in several of its subsequent reports. At the turn of the millennium, its statement of caution about protecting human rights had a prophetic undertone in light of future events: "*We believe the Service should take all possible care to ensure that the information it provides is not used to assist in the violation of human rights. To that end, SLOs [Security Liaison Officers] are obligated to give the rest of the Service timely and accurate assessments of an agency's human rights record and of its propensity to pass information on to third parties without authorization.*"<sup>113</sup> In light of the findings of the O'Connor inquiry, it seems that CSIS heeded this advice, but that the RCMP did not. In its volume containing analysis and recommendations, the O'Connor report states that CSIS has a counterterrorist unit staffed by highly specialized analysts with eminent training. It further argues that the members of the RCMP involved in "Project A-O Canada," which led to the sharing with U.S. counter-terrorist agents of information that was both detrimental to Mr. Maher Arar and inaccurate, did not have the competence to pursue counter-terrorist investigations and viewed the Arar investigation as just one criminal investigation among many others. The O'Connor report also notes that the police involved in Project A-O Canada could have relied on CSIS or on the competence of the RCMP national security unit operating from the Ottawa Headquarters, but did not.<sup>114</sup>

The parts cited from the 2006 O'Connor report touch on at least five issues that I have discussed: (1) the criminal investigation culture versus the security intelligence culture; (2) the poor level of cooperation between units of the RCMP and CSIS; (3) the contrasting attitudes of agents from both agencies, depending on whether they are at headquarters or operating in the regions; (4) the cautiousness to be exercised in dealing with foreign agencies, even friendly ones; (5) relics of the RCMP Security Service high-handedness towards human rights. On some of these issues, it appears that little progress was made since the birth of CSIS in July 1984. More important, these concerns also raise the spectre of the questionable

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<sup>112</sup> SIRC *Annual Report 1998-99* at 28.

<sup>113</sup> SIRC *Annual Report 2000-01* at 7 [emphasis added].

<sup>114</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar*, *supra* note 54, Vol. III, chapter 3, section 2.4.

ability of local RCMP investigators to conduct an investigation into a terrorist incident.

### 3.6 Accountability

CSIS and the RCMP differ in their accountability structures. The main difference lies in external review. The RCMP is accountable in this respect to two bodies. The Commission for Public Complaints against the RCMP (CPC) handles complaints from the public. The RCMP External Review Committee (ERC) has the mandate for civilian oversight of labour relations within the Force, and reviews grievances as well as appeals regarding formal disciplinary measures. The operations of CSIS are externally reviewed by SIRC. The overwhelming difference between SIRC and the RCMP's CPC and ERC is that SIRC, unlike its RCMP counterparts, is not limited to examining individual complaints. The CPC and the ERC play almost no role in defining RCMP policies. In contrast, SIRC reviews the operations of CSIS and, most significantly, makes recommendations that have an impact on the structure of the Service (for example, leading to the dismantling of the Counter-Subversion Branch) and its policies (for example, training). During the early years of CSIS, SIRC played a decisive role in steering it away from the culture of institutional wrongdoing that prevailed within the RCMP Security Service, and in shaping its occupational and organizational culture. Indeed, it is my conviction that SIRC was a strong component of this culture in the early years of the Service. It may be that the influence of SIRC on CSIS has somewhat decreased over the years.

In media interviews given to the CBC in 2006, the former chair of the CPC, Shirley Heafy, bitterly denounced the lack of cooperation from the RCMP during her tenure. In its second report, the O'Connor Commission proposed that the RCMP accountability mechanisms in the field of national security be completely restructured to ensure that a new body had SIRC-like audit and investigation powers and was not limited to the hearing of complaints.<sup>115</sup> On 14 December, 2007, the Task Force on Governance and Culture Change in the RCMP, presided by Mr. David Brown, recommended in its report that an independent complaint commission with increased powers be established for the RCMP.

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<sup>115</sup> Canada, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Minister of Public Works and Government Services, 2006) (Chair: Dennis O'Connor).

SIRC generally enjoyed much greater cooperation from CSIS. However, in a declassified June 7, 2005, ruling by SIRC on the complaint by Bhupinder S. Liddar against CSIS and the Deputy Head of the Department of Foreign Affairs and International Trade, the then chair of SIRC, the Hon. Paule Gauthier, concluded that SIRC was “purposefully misled by the Service in this incident...”<sup>116</sup> Further, she stated, “In any case, I conclude that the Service provided me with misleading answers to my questions in order to prevent Mr. Liddar or the Review Committee from having information – that would have been known by the Service to be potentially relevant to my investigation – brought to our attention.”<sup>117</sup> This indictment is all the more significant in light of the length of Ms. Gauthier’s tenure on SIRC. She is the only person to have been a member of SIRC from its creation in 1984 until 2005, when she was replaced by the Hon. Gary Filmon.

#### 4. PROFESSIONAL CULTURES IN CONTRAST AND IN CONTACT

I will now bring together the conclusions of the previous discussions in two tables. These tables summarize the contrasting features of CSIS and the RCMP that were discussed above. They also add to them – in particular Table 2, which presents new material in relation to the public **symbolic resonance** of the RCMP and law enforcement forces on the one hand, and of CSIS and security intelligence agencies on the other. With respect to certain features, the contrast is marked, as it is in respect to the evidence versus intelligence conundrum. In other cases – for instance, internationalization – the contrast is less pronounced, as both agencies operate in part on the international level (this part being nonetheless greater for CSIS). Table 1 presents the elements and determinants of the RCMP and CSIS occupational and organizational cultures. For example, the degree of centralization of an agency is an organizational fact. However, the regional autonomy that flows from decentralization belongs to the professional culture.

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<sup>116</sup> Full cite needed? Para 8.

<sup>117</sup> Ibid at Para 10.

**Table 1**  
**Elements and determinants of occupational**  
**and organizational culture**

POLICE - RCMP	SECURITY INTELLIGENCE - CSIS
1. REACTIVE - after the fact	1. PREVENTIVE/PROACTIVE - before the fact
2. Mobilized by <i>CITIZEN COMPLAINANTS</i>	2. <i>SELF TRIGGERING</i> - mobilized by <i>Government</i>
3. Collect EVIDENCE for public proceedings	3. Collect secret INTELLIGENCE to advise government
4. Powers of <i>COERCION</i>	4. Powers of <i>INTRUSION</i>
5. Institutional clients: CROWN and JUDICIARY	5. Institutional clients: branches of the EXECUTIVE
6. Bound by rules of legal PROCEDURE	6. Fewer rules and more DISCRETIONARY POWER
7. Protected from external (political) INTERFERENCE – <i>INDEPENDENT body</i>	7. Subject to MINISTERIAL WRITTEN DIRECTIONS
8. HIGH PUBLIC PROFILE and openness	8. LOW PUBLIC PROFILE: SECRECY and stealth
9. CASE-BY-CASE ACCOUNTABILITY driven by individual complaints	9. Organizational, SYSTEMIC and individual complaint ACCOUNTABILITY
10. High internal TERRITORIALIZATION – low international involvement	10. Centered on domestic operations with increasing trend towards INTERNATIONALIZATION
11. DECENTRALIZED organizational structure	11. CENTRALIZED organizational structure
12. HIGH REGIONAL AUTONOMY	12. LOW REGIONAL AUTONOMY
13. MILITARISTIC structure and training	13. CIVILIAN organization with ACADEMIC training

As Table I shows, some of these features form a sequence, such as features 2 to 6 on the left, as they relate to the police. The police are mobilized by a complainant (often one calling the emergency 911 number). When there is enough are indication that a crime has been committed, police

investigators collect evidence and when it is sufficiently strong, they use their powers of coercion to perform an arrest. The person arrested is charged and brought to trial. The trial is conducted according to compulsory rules of procedure and exacting standards of proof.

Three other attributes distinguish police agencies from security intelligence agencies. These attributes were not discussed in this paper as explicitly as those mentioned above.

The first is the issue of mobilization. Police intervention is in the great majority of cases triggered by an external complainant, generally a citizen. In contrast, intelligence agents scan the social environment on their own, looking for security threats, or they follow written directives issued by a government minister. Their targeting is most often triggered from inside the agency.

The second distinction concerns means. In both the law and research literature, the police are defined by their use of **legitimate force**. Security intelligence agents are characterized by their use of powers of **covert intrusion** to collect concealed information.

The third distinction relates to independence. The police operate at arm's length from the executive branch of government, with the RCMP jealously defending its independence from political interference. In contrast, CSIS is explicitly bound by law to the executive branch.<sup>118</sup> It is interesting to note in this respect that the RCMP Security Service had no enabling law, its existence resting on executive orders. This was also the situation with CSE for more than half a century.

As these words are used in the literature, occupational and organizational culture refer to the internal professional culture of an agency, *as it springs from the in-group*. Symbolic features, as I use the words, refer both to the socio-psychological impact of an agency on the outside world and the external characteristics that are attributed to the agency and its members. These characteristics attributed from the outside have a feed-back action, looping back into the internal professional culture and shaping it to a significant extent.

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<sup>118</sup> *Canadian Security Intelligence Service Act*, *supra* note 39, sections 6(2), 12-16.



**Table 2**  
**Symbolic features**

<b>POLICE – RCMP</b>	<b>SECURITY INTELLIGENCE – CSIS</b>
1. Canadian icon	1. Canadian exemplar
2. Symbol of the law	2. Symbol of the power of the State
3. Law-abidingness	3. Extra-legality
4. Trust	4. Fear

I will briefly comment on these features, some of which are self-evident. (1) The “Mounties,” along with the maple leaf and the beaver, are a symbol of Canada and have generated a rich hagiography (“They always get their man.”). Their iconic character is one of the most deeply embedded aspects of their culture. They are also world symbols of police integrity. The symbolic resonance of CSIS is not on a par with that of the RCMP. Nevertheless, the accountability structure of CSIS and its commitment to human rights is often cited at the international level. (2) The police are the most potent symbol of the law (indeed, they are commonly referred to as “the law”). Security intelligence services, also designated as the “political police,” symbolize the power of the State. In this respect, their symbolic functioning is very different from that of the police. The police are *visible* symbols of the law, whereas the intelligence services are *stealthy* symbols thriving on rumours and innuendo. (3) This third contrast is easy to misunderstand. The drive to separate the Security Service from the RCMP was initially started by the Mackenzie Commission report.<sup>119</sup> The main reason for Commissioner Mackenzie’s recommendation to separate the Security Service from the RCMP was his belief that it was “unavoidable” that a security service would be involved in operations that would contradict the spirit, if not the letter, of the law, and that it would take part in covert activities that would violate civil rights. As representatives of the law, the police could not afford to be involved in such contradictory behaviour.<sup>120</sup> However, the research literature on the police stresses that policing is a “tainted” occupation<sup>121</sup> and that the police are in fact performing “dirty work.” This apparent contradiction disappears to a great extent when we distinguish between reality and symbol. Despite the fact that the police may **in fact** often break the law, it is not admissible to grant **legitimacy** to these violations **on the levels of principle and value**, where appearances must be maintained.

<sup>119</sup> Royal Commission on Security, *Abridged Report of the Royal Commission on Security*, *supra* note 65.

<sup>120</sup> *Ibid.* at para. 57.

<sup>121</sup> Egon Bittner *Aspects of Police Work* (Boston: Northeastern University Press, 1972) at 95-96.

The situation is quite different for intelligence services. Their lawlessness is the stuff of their legend. Their abuses are either legalized or covertly authorized by the executive. Appearances are completely reversed in the case of intelligence services. The rogue culture fostered by fiction and by the media is that an intelligence agency is efficient in proportion to its lack of respect for all rules, whereas these services are in fact closely monitored and more strictly bound by the legal rule and internal regulations than is believed. (4) Manning<sup>122</sup> and others have stressed that policing relied on trust. Simply put, you have to trust the police in order to call them. All reforms of policing that followed World War II – team policing, community policing, “*police de proximité*” – were predicated upon the establishment of trust between the police and the public. In contrast, the action of security services more often elicit fear than trust, even in democracies, where too much political policing is said to have a “chilling effect.” Paradoxically, the attitudes of these agencies towards their covert informants seem to follow reverse logic. Police informants are generally handled by alternating the carrot and the stick – fear of the stick playing the dominant role. In contrast, intelligence agents appear to be fiercely loyal to their sources, to the point of circumventing the law to protect their identity.

## 5. TO CONCLUDE

The preceding section has been in part devoted to a synthesis of the paper. There is no need to go over the same ground again here. I will conclude by asking two questions:

- (1) What went wrong in the Air India investigation and subsequent 2003 trial, which ended in the acquittal of the accused in 2005?
- (2) What needs to be done?

My answers to both questions are tentative and meant as suggestions for future inquiries.

### 5.1 What went wrong?

I have done first-hand research from police archives (1990-2002) on the criminal investigation of homicides (all kinds). In the course of this research, I also reviewed the research literature on this topic. The main

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<sup>122</sup> P.K. Manning, *Policing Contingencies* (Chicago: The University of Chicago Press, 2003).

finding of my research, which is confirmed by all other research, is that a high proportion of homicide cases – 71 per cent of the 153 cases my research examined – are solved within 24 hours, and 83 per cent are solved in less than a week.<sup>123</sup> The longer an investigation extends, the less likely it is that the crime will be solved. In light of this highly corroborated finding, the first months that followed the June 1985 Air India bombings were of crucial importance. Was the failure to solve the case when it could have been solved (according to the probability of clearing a case) due to a clash of professional cultures between the RCMP conducting the investigation and CSIS? As I suggested earlier, my hypothesis is not only that we should answer this question in the negative, but that we should resist its handy simplicity. CSIS had been created only eleven months before the tragedy and was essentially staffed by ex-RCMP Security Service members who had not yet developed an intelligence culture. This is overwhelming clear from SIRC's annual reports from 1984-85 to 1989-1990. What happened in British Columbia after the Air India bombings much more closely resembles an institutional police panic and improvisation, and investigative incompetence, than anything else.

This last observation goes beyond a purely factual explanation as it involves a value judgment on the quality of the work performed by the investigators. I would add to this my view that RCMP and CSIS estrangement from the Indo-Canadian community also played a great part in the failure to solve the case. The agencies had few contacts within this community and probably had little idea of where to start.

Finally, after all these years, the Crown's case in the 2003 criminal proceedings rested on the testimony of two informants, one of them a typical police informant and the other a witness who was emotionally involved with one of the accused and who agreed to come forward. Neither of the informants convinced Judge Josephson. His 2005 verdict was not appealed.

## 5.2 What needs to be done?

The answer to this question will no doubt take the form of many recommendations. This paper is limited in scope. I will therefore limit myself to making two suggestions.

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<sup>123</sup> Jean-Paul Brodeur "L'enquete policiere" in *Criminologie* (Montreal: Les Presses de l'Universities de Montreal, 2005); Charles Wellford and James Cronin, *An Analysis of the Variables Affecting the Clearance of Homicides: A Multistate Study* (Washington, DC: Justice Research and Statistics Association, 1999). (Brodeur, 2005;

### 5.2.1 Joint targeting with separate means

First, evidence and intelligence collide in two situations:

- (1) when the evidence and the intelligence coincide through the potential testimony of a single individual (the worst case scenario). In the proceedings against Khela and Dhillon, the testimony of a source ("Billy Joe"), whose identity the counter-terrorism police wanted to keep secret, was the sole foundation of the prosecution's case. Billy Joe's identity was ultimately protected and both accused were acquitted; or
- (2) when they are produced by the same physical means, whether as intelligence or as criminal evidence.. An example is the erasure by CSIS of the audio-tapes that might also have been crucial evidence for the police during the first year of the Air India investigations. One way out of this predicament would be *joint targeting*. **If CSIS had solid intelligence on the clear and present threat presented by an individual or group, it could pass this information to a law enforcement agency so that the agency might target the same individual or group for its own evidentiary purposes, using its own, separate, means, instead of using the intelligence collected by CSIS for purposes of threat assessment.** This arrangement could be implemented through the senior level committee contemplated under the September 29, 2006, MOU between the RCMP and CSIS. The general goal of this committee is to coordinate the investigations of both agencies.<sup>124</sup>

### 5.2.2 Revisiting *Stinchcombe*

Although I have no academic legal training, I will venture to trespass on guarded territory in offering my assessment that the *Stinchcombe* ruling has now been diverted from its original purpose. That original purpose was not only to preserve the rights of the defendant but to facilitate and speed up court proceedings. It has in the latter regard had the opposite effect. As already mentioned, the preliminary hearing of the four teens accused of involvement in an alleged 2006 Toronto bomb plot required the disclosure of two million pages of evidence. It seems to me that

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<sup>124</sup> RCMP/CSIS MOU 2006 at (Part 1, section 3).

this situation is not propitious for justice. My suggestion is to clarify the disclosure requirements in Canadian criminal proceedings through ministerial guidelines or new legislation.

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Jean-Paul Brodeur has published 18 books and more than 160 articles on policing, criminal justice and politically motivated deviance. He was asked by the *Encyclopedia Britannica* to update its articles on *Police* and *Police technology* for its current edition. His latest books are *Democracy, Law and Security* (2003, with Peter Gill and Dennis Töllborg) and *Citoyens et Délateurs* (with Fabien Jobard). He is now completing a *Treatise on Policing* (September 2008).

