

**Remarks by the Honourable David McGuinty, Chair of the National Security and Intelligence
Committee of Parliamentarians**

On the tabling in Parliament of the NSICOP 2018 Annual Report

April 9, 2019

Good morning, Ladies and Gentlemen.

Thank you for joining us this morning.

Today is an important day for the National Security and Intelligence Committee of Parliamentarians, or 'NSICOP.'

The Committee's first annual report was just tabled in Parliament.

The report is the result of the work, dedication and commitment from my colleagues on the Committee: -- three Senators and eight Members of Parliament -- from all major parties and groups.

I want to personally thank and express my appreciation to Senators Frances Lankin, Vern White and Percy Downe; and to Members of Parliament Murray Rankin, Hedy Fry, Emmanuel Dubourg, Rob Nicholson, Gudie Hutchings, Tony Clement, Diane Finlay and Brenda Shanahan.

We are very proud of this accomplishment, and I speak for them in saying that we feel very privileged to serve on this important and non-partisan Committee on behalf of our colleagues in Parliament and on behalf of Canadians.

The report is intended to contribute to an informed debate among Canadians on the difficult challenges of providing security and intelligence organizations with the exceptional powers necessary to identify and counter threats to the nation, while at the same time ensuring that their activities continue to respect and preserve our democratic rights.

I'll address the following issues this morning:

- The mandate of NSICOP
- Its activities for 2018
- An overview of our 2018 Annual Report
- The Redaction process
- The two substantive reviews, that is the Intelligence Priorities, and the intelligence activities of the Department of National Defence and the Canadian Armed Forces

And I will offer some concluding remarks.

Mandate of NSICOP

The legislation that set up NSICOP received Royal Assent in June 2017 and the members of the Committee were appointed in November 2017.

We have the mandate to review the overall framework for national security and intelligence in Canada, including legislation, regulations, policy, administration and finances.

We may also examine any activity that is carried out by a department that relates to national security or intelligence.

And finally we may also review any matter relating to national security or intelligence that a Minister refers to the Committee.

We are all cleared to Top Secret, swear an oath, and are permanently bound to secrecy.

The mandate and our clearances give us the ability to examine Canada's national security and intelligence framework from a strategic perspective, and follow information across the security and intelligence community.

I believe that the nature of the Committee – multiparty, bicameral, and a membership with a broad range of experience – brings a unique perspective to these important issues.

But with a broad mandate and broad access to classified information comes certain obligations and restrictions, that is: checks and balances both on the part of the Committee and on the part of Ministers.

In order to conduct our work, we are entitled to have access to any information that is related to our mandate.

But there are some exceptions, namely Cabinet confidences; the identity of confidential sources or of protected witnesses; and ongoing law enforcement investigations that may lead to prosecutions.

Further, a Minister may determine that our proposed review of a specific activity may be injurious to national security. In that case, he or she must inform us in writing that we cannot undertake that review AND to inform us when that review is no longer considered injurious.

NSICOP activities for 2018

Before I discuss the report, I will provide a summary of the work of the Committee in the past year.

After being appointed and sworn in to NSICOP, we received extensive briefings on our security obligations and requirements, and got down to work once Ms. Marcoux was appointed as the Executive Director of the Secretariat in December 2017.

2018 was a year of learning for the Committee. We spent many hours and meetings building our understanding of our mandate, and of the organizations responsible for protecting Canada and Canadians.

In the first several months of 2018, the Committee was briefed by officials from across the security and intelligence community.

We visited all seven of the main departments and agencies, and met several times with the National Security and Intelligence Advisor to the Prime Minister.

We believe that we have established productive relationships with the officials who are charged with keeping Canadians safe.

This was important so that we could get to know them, and they us. In this regard, I would refer you to annex C of our report.

As you know, the Committee also decided to conduct a review of certain security allegations surrounding the Prime Minister's trip to India in February, 2018. Our Special Report was provided to the Prime Minister on October 12, and an unclassified version was tabled in Parliament on December 3.

Members of NSICOP take their responsibility very seriously, and dedicate a great deal of time and effort to this Committee. Over the course of 2018, the Committee met more than 50 times, with an average of four hours per meeting.

We had the opportunity to meet with our Parliamentary counterparts from the UK and Australia, who provided insights and good advice based on their years of experience.

We also solicited and benefited from the thoughtful views of academics and civil liberties groups, perspectives that the Committee believes are important to hear.

As all of this was underway, Ms Marcoux needed to set up the Committee's secretariat from scratch.

The Committee meets in camera, in a secure location, away from the Parliamentary Precinct.

Overview of 2018 Annual Report

The Annual Report tabled today contains five chapters, including the two substantive reviews conducted by the Committee.

Because this report is the first one undertaken by NSICOP, members wanted to take a broader, foundational approach.

As such, we have included two chapters that describe for Canadians the origins of NSICOP, our mandate and how we approach our work, including what factors the Committee takes into consideration when deciding what to review.

We also felt it was important to include in the second chapter an overview of the security and intelligence organizations in Canada; of the threats to Canada's security and how these organizations work together to keep Canada and Canadians safe and promote Canadian interests.

In doing so, the Committee wanted to contribute to the debate on issues that are of fundamental importance to Canadians.

The Committee decided to conduct a review under the first two parts of its mandate.

First, a review of the framework for national security and intelligence, specifically on how the Government of Canada sets its intelligence priorities.

And a second review of an activity by a department; in this instance we chose to focus on the defence intelligence activities conducted by the Department of National Defence and the Canadian Armed Forces.

The report is the result of extensive oral and written briefings, more than 8000 pages of printed materials, dozen of meetings between NSICOP analysts and government officials, in-depth research and analysis, and thoughtful and detailed deliberations amongst Committee members.

The report is also unanimous.

In total, the report makes 11 findings and 7 recommendations to the Government.

In our meetings and discussions with officials, in our deliberations, and in our report, the Committee has been scrupulously careful to take a non-partisan approach to these issues, and we hope that our findings and recommendations will strengthen the accountability and the effectiveness of Canada's security and intelligence community.

The classified, unredacted version of the Report tabled today was provided to the Prime Minister on December 21, 2018.

Redaction process

Let me now say a word about the redaction process.

Between the time the Committee provided the report to the Prime Minister and its tabling in Parliament today, government officials reviewed the report for any information the disclosure of which would be injurious to national security, national defence or international relations.

Those officials also identified information that qualifies as solicitor-client privilege.

The redactions are conducted by individual departments and coordinated by the Department of Justice. Those officials used the same process as is used by the government when determining what information can be released in Court proceedings (typically under Section 38 of the *Canada Evidence Act*).

Once that information was identified, the Prime Minister directed the Committee to revise the report to remove information that may be injurious if released. This is consistent with subsection of 21.5 of the NSICOP Act.

The Committee revised the document both to remove the information that was potentially injurious and to provide as much information to the public as possible.

Sections that have been revised are noted throughout the text.

I want to emphasize here that revisions or redactions are made to remove information that *would be injurious* to Canada's national security, national defence or international relations, or is solicitor-client information.

Information cannot be redacted *because it may be embarrassing* to, or critical of, any government.

This redaction process was a learning opportunity for the Committee and something members will continue to pay close attention to in the future.

Two substantive reviews

At this point, I'd like to discuss the Committee's two substantive reviews:

- First, how the government sets its intelligence priorities, and
- Second, the defence intelligence activities of the Department of National Defence and the Canadian Armed Forces.

You will see that those two chapters contain a significant amount of technical information. I don't propose to go into the details of our reviews, given time limitations, so if you have any specific questions, I invite you to follow-up with Ms Marcoux or her staff after my remarks.

First, the Intelligence Priorities:

The Committee chose to review the way that the government determines its intelligence priorities.

Why is this important? There are three reasons.

First, this process is the fundamental means of providing direction to Canada's intelligence collectors. It ensures that the organizations responsible for collecting intelligence focus on the government's highest priorities.

Second, this process is essential to ensure accountability in the intelligence community.

What the intelligence community does is classified, and often highly classified. This process gives the government regular insight into intelligence operations from a government-wide lens.

And third, this process helps the government to manage risk.

When the government approves the intelligence priorities, it is accepting the risks of focusing on some targets and also the risk of not focusing on others.

In Canada's system of government accountability, it is elected officials – Ministers, not officials – who must assume those risks.

The Committee found that the process, from identifying priorities to translating them into practical guidance to informing Ministers and seeking their approval, does have a solid foundation.

That said, any process can be improved. And the Committee has made seven findings and four recommendations to that effect.

In particular, the Committee believes that the Prime Minister's National Security and Intelligence Advisor should take a stronger leadership role in the process in order to make sure that Cabinet has the best information to make important decisions on where Canada should focus its intelligence activities and its resources.

I encourage you to read Chapter three of our report.

Second, the intelligence activities of the Department of National Defence and the Canadian Armed Forces:

The Committee felt very strongly about this review.

We took close note of the plans for defence intelligence investments set out in the new Defence Policy: *Strong, Secure, Engaged*.

The policy states that DND/CAF is, "the only entity within the Government of Canada that employs the full spectrum of intelligence collection capabilities while providing multi-source analysis."

Let me be clear: the Committee did not conduct an in-depth examination of every part of DND/CAF's development and use of defence intelligence activities.

Rather, the Committee focused on understanding the broad intelligence activities conducted by DND/CAF and the authorities which underpin them.

We recognize that defence intelligence activities are critical to the safety of troops and the success of Canadian military activities, including those abroad, and are expected to grow.

When the Government decides to deploy the Canadian Armed Forces, DND/CAF also has **implicit** authority to conduct defence intelligence activities. In both cases, the source of authority is the Crown Prerogative.

This is very different from how other intelligence organizations, notably CSE and CSIS, operate. Each of those organizations have clear statutory authorities to conduct intelligence activities. And they are subject to regular, independent and external review.

This was a significant and complex review.

The Committee met senior officials from DND/CAF six separate times. We received over 4500 pages of documentation, and our Secretariat held numerous working-level meetings with DND/CAF officials, and officials from other government organizations. We also conducted significant academic and legal research and outreach.

The Committee made four findings and three recommendations.

Our first recommendation focuses on areas where DND/CAF could make changes to strengthen its existing governance structure over its intelligence activities and to strengthen the accountability of the Minister. Those changes can be implemented internally.

The other two recommendations would require the Government to amend or to consider enacting legislation.

The Committee has set out the reasons why it formed the view that regular independent review of DND/CAF intelligence activities will strengthen accountability over its operations.

We believe that there is an opportunity for the Government, with Bill C-59 still before the Senate, to put in place requirements for annual reporting on DND/CAF's national security or intelligence activities, as would be required for CSIS and CSE.

Second, the Committee also believes that its review substantiates the need for the Government to give serious consideration to providing explicit legislative authority for the conduct of defence intelligence activities.

To summarize a very complex and technical chapter, defence intelligence is critical to the operations of the Canadian Armed Forces.

However, like all intelligence activities, the conduct of defence intelligence activities involves inherent risks.

In its review, defence officials expressed concerns to the Committee about maintaining operational flexibility for the conduct of intelligence activities in support of military operations.

The Committee therefore thought it was important to present both the risks and the benefits of placing defence intelligence on a statutory footing.

Our recommendations are a reflection of the Committee's analysis of these important issues.

I invite you to read chapter four of our Annual Report.

Conclusion

NSICOP's inaugural year was marked by learning and adjustment for the Committee and its Secretariat, as well as for the security and intelligence community, many of whom were not accustomed to external review of their information and activities.

We recognize that our timelines for the provision of information and briefings imposed significant pressures on the security and intelligence community and the Committee wishes to convey its sincere appreciation for their efforts and their assistance.

In their meetings and briefings with us, these officials were generous with their time and readily shared their experience – and information - with the Committee.

Dedication

In closing, the Committee dedicates its first Annual Report to the memory of Gord Brown, the former MP for Leeds-Grenville-Thousand Islands and Rideau Lakes, who passed away on May 2, 2018.

As a founding member of NSICOP, Mr. Brown's thoughtful contributions during the early months of our work helped shape and guide our reviews over the past year.

His passing deprived us of a wise and considered voice on issues of importance to Parliament and to Canadians.

Thank you, I will now take your questions.