

University of Toronto, Munk School of Global Affairs
Workshop on National Security and Intelligence Committee of Parliamentarians
November 21, 2016

On November 21, 2016, the Munk School of Global Affairs at the University of Toronto hosted a workshop on the National Security and Intelligence Committee of Parliamentarians proposed by Bill C-22. The discussion included 14 participants, including academics, national security practitioners, members of Parliament, and staff from review bodies. The following summarizes key highlights from the afternoon's discussion, as well as recommendations from the group on priorities for the new Committee's work.

Membership in the Committee

It was observed that the Committee may be best served if it was composed of more senior Members of Parliament. Newer members, who may have competing priorities as they establish their political careers, might not be able to devote sufficient time to the work of the Committee. The credibility of the Committee will also be dependent on its ability to remain nonpartisan. It was discussed whether the Committee should attempt to reach consensus in its work as often as possible, or whether there should be a mechanism for dissenting opinions to be made public.

Access to information

Access to information is critical the credibility and legitimacy of the Committee. This includes power of subpoena, ability to obtain testimony, and access to otherwise protected information. Some participants highlighted concern over s. 14(e) of Bill C-22 (the Committee is not entitled to have access to information regarding "ongoing operations"), because some operations are categorized as "ongoing" for years. Similar concerns were raised regarding limitations set out in ss. 8(b) and 16, which gives Ministers power to limit review or refuse information if they are of the opinion it is, *inter alia*, "injurious to national security." Alternative mechanisms for resolving disputes over access to information were discussed. One option would be to apply s.38 of the Canada Evidence Act and allow judges to resolve disputes after balancing the competing interests for and against disclosure. Another option would to have disputes decided by a retired judge. Such dispute resolution mechanisms could potentially counterbalance ministerial powers to block investigations and withhold/redact information. Independent review of the ministerial decision may bolster the legitimacy of the Committee. However, there was mixed opinion as to whether judicial review would strengthen or hinder the process.

The public's ability to know about the work of the Committee was also discussed, including reporting on its investigations and being clear about where sensitive information was withheld from public disclosure. There were suggestions that the Committee could suffer from a lack of the maximum possible transparency. It was also suggested that the Committee should make an annual report of instances where Ministers refused to permit review of activities or access to information on national security grounds

Strategic plan and ongoing activities of the Committee

In the absence of clear language in Bill C-22, the Committee will need to develop at the outset a strategic plan that includes a clear vision of the role they will play in national security accountability, as well as how they will interact with other review bodies and what issues they will address.

There were a number of suggestions for ongoing activities for the Committee, including:

- serving as a repository for all ministerial directives relating to national security and conducting periodic efficacy and legality reviews of the directives
- collecting and auditing government and agency legal opinions informing national security practice and policy, thus responding to concerns about “secret law” and possible executive overreaching
- maintaining a list of law reform priorities relating to national security, and engaging in study on those issues

Criteria for success

There was discussion around potential indicators of success for the Committee. Suggestions included:

- Production of study reports, with actionable items and recommendations
- Action taken by government on recommendations in study reports
- Publication of study reports, with appropriate redactions of sensitive information if required
- No leaks of confidential information from the Committee
- Nonpartisanship, as reflected in the Committee not being political fodder around elections

Recommended priority issue for the Committee’s study

The group recommended that the first issue for the Committee’s study should be one which would engage the Committee with an area of substantive concern, have existing engagement both inside and outside government, involve questions of policy (as opposed to lawfulness) and require interaction with the independent expert review bodies. Such a topic would give the Committee an opportunity to build cooperation and expertise, and to situate itself within the overall accountability framework, particularly vis-à-vis the expert review bodies.

The group’s recommendation is that the Committee should prioritize study on policies and practices related to bulk data collection, retention and use by Canada’s intelligence and law enforcement agencies. Other possible topics would include the gaps in executive watchdog review particularly in relation to the national security activities of the Canadian Border Services Agency.