



University of Toronto, Munk School of Global Affairs
Workshop on National Security Accountability
November 21, 2016

On November 21, 2016, the Munk School of Global Affairs at the University of Toronto hosted a workshop on national security accountability, prompted by the Government of Canada's 2016 Green Paper: "Our Security, Our Rights". The discussion included about 20 participants, including academics, national security practitioners, members of Parliament, staff from review bodies, and the Government (from CSE, CSIS, Public Safety, and the PMO). The following summarizes key highlights from the morning's discussion.

Independent expert review

An integrated independent review body (the so-called super-SIRC) was discussed as an option to create a more coherent structure for national security review, mitigating what was described as the "architectural incoherence" of the current system. Some participants observed that security agencies have historically resisted the idea of integrated independent review, while others expressed concern that a super-SIRC might erode the agency-specific expertise of SIRC, OCSEC, and CRCC. In response, it was suggested that a super-SIRC can have a cross-agency mandate, but operate with issue-specific or agency-specific sub-committees, panels, or departments.

Bill C-22 and the National Security and Intelligence Committee of Parliamentarians

The group discussed parliamentary accountability primarily in the context of Bill C-22 and its proposed Committee of parliamentarians, identifying a number of issues relating to the effectiveness of the proposed Committee.

It was noted that providing sufficient resources to the Committee would be critical to its functioning and to its ability to provide real accountability, particularly given that parliamentarians serving on the Committee may not necessarily be intelligence or security experts, and will only be able to devote a portion of their time and attention to the work of the Committee. One suggestion was to create a system for hiring security-cleared contractors to assist with the work of the Committee.

Participants also repeatedly highlighted the importance of access to classified information and a subpoena power. Some participants also commented on the importance of accessing information typically protected by legal privilege and approved of provisions in Bill C-22 that allow this to occur.

Discussion also focused on whether the Committee should serve have a real-time oversight function of ongoing security activities, noting that the legislative language of Bill C-22 contemplates primarily a review function of security activities that have already taken place. Some participants observed that Parliamentary committees are generally better equipped to engage with studies at a policy level rather than with operational matters.

Participants discussed the importance of determining the comparative advantages of a committee of parliamentarians, and in setting out a clear relationship between the Committee and expert review bodies. One suggestion was for independent review bodies to engage in detailed or specific studies where the Committee lacked the capacity or resources to do so. On the issue of coordination between parliamentary accountability and independent review, it was suggested that the legislation make explicit the relationship between the Committee and the expert review bodies, and formalize coordination.

It was agreed that the initial operation of the Committee will be vital in setting the culture of the Committee in the long run. Partisanship was identified as a possible danger confronting the committee.

Judicial Accountability

Participants discussed the possibility of creating a mechanism through which review bodies can contact courts when issues arise under existing warrants. One participant observed that there currently exists a “broken telephone” problem between courts and bodies, with courts having incomplete information on what happens after a warrant is authorized. It was also suggested that the designated bench of the Federal Court be provided with the classified versions of the reports of the independent review bodies as they are completed.

Ministerial Accountability

Participants identified structural challenges with respect to ministerial accountability. National security agencies and activities are spread across multiple Ministers, making coordinated oversight difficult. The ability of Ministers to provide an oversight function has also been challenged with the decreasing expertise on national security issues within the ranks of ministerial staff, which are increasingly staffed by political appointments. It was also observed that Ministers now make fewer decisions on national security matters than in the past.

Reviewing and Updating National Security Legislation

A number of participants suggested that national security legislation should be updated more regularly, especially given the speed and sophistication of technological change. It was discussed whether this should be a task for the proposed National Security and Intelligence Committee of parliamentarians, or for an independent legislation monitor such as used in the UK and Australia. Participants identified reluctance from the executive and legislative branches to engage in regular review of legislation, not because they think it is perfect, but because of concerns relating to cost, controversy, and efficiency.