



Eyes on the Spies

Reforming Intelligence Oversight in Canada

Paul Robinson

Ron Suskind's latest book, *The Way of the World*, caused a minor stir earlier this year. The book accused the Bush administration of having ordered the forgery of documents purporting to prove a link between Saddam Hussein's government and the terrorist organization Al Qaeda. Less noticed was another sensational revelation in Suskind's book – that shortly before the invasion of Iraq, the British Secret Intelligence Service (SIS) had persuaded the chief of Iraqi intelligence to reveal Hussein's most important secrets, including the fact that Iraq did not possess any weapons of mass destruction. Suskind reported that this was confirmed to him by no less a figure than Richard Dearlove, the head of SIS at the time.

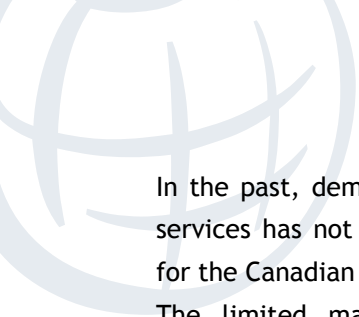
The United Kingdom has held three inquiries into the issue of intelligence and weapons of mass destruction (WMD), one conducted by the Intelligence and Security Committee, a rather weak parliamentary oversight body, and two conducted by independent judges (Lords Butler and Hutton). None of these three inquiries unearthed the information that Suskind found, information which was surely of vital importance in any review of the performance of British intelligence and the British government. To date, in fact, Suskind's

At a glance...

- *The mandates and activities of Canadian security and intelligence services have expanded significantly since 9/11, but there has been no corresponding expansion in civilian oversight of these services.*
- *Improved oversight is needed to ensure that security and intelligence actors operate legally and competently.*
- *Without improvements to civilian oversight, the expansion of Canadian intelligence activities may need to be reconsidered.*

revelation has not been denied and appears to be true.

The performance of Britain's three inquiries reveals the inadequacies of the British system of intelligence review and oversight. Given that Canada shares the same parliamentary system of government, the question is whether it is possible to construct a better review and oversight mechanism here.



In the past, democratic accountability of the secret services has not been a matter of great importance for the Canadian government or the Canadian people. The limited mandates of the Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment (CSE) meant that there was relatively little public concern about their activities, and general satisfaction – or perhaps more accurately, indifference – regarding the review and oversight work of the Security Intelligence Review Committee (SIRC) and the Office of the CSE Commissioner.

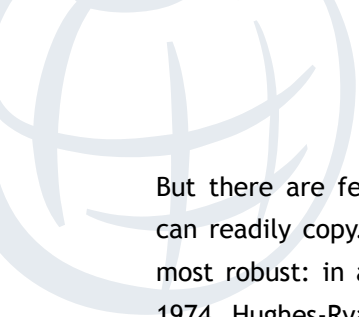
With the advent of the ‘War on Terror’, the scope and scale of Canadian intelligence activities has expanded. Questions surrounding the democratic accountability of Canada’s intelligence and security services have thus become more pressing. Although the Conservative government did not live up to its original campaign promise to create a Canadian foreign intelligence service, CSIS is increasingly active overseas, while the Canadian Forces have created a human intelligence unit which has been operating in Afghanistan. At the same time, the Royal Canadian Mounted Police (RCMP) have moved back into the business of security intelligence through their work on counter-terrorism issues.

Whether these changes are necessary is a separate issue, but historical experience does suggest that the expansion of intelligence activities is fraught with moral and legal pitfalls. The current system of Congressional intelligence oversight in the United States arose in response to illegal and often counterproductive actions conducted by US intelligence services, especially the Central Intelligence Agency. Revelations that the National Security Agency engaged in illegal wiretapping of American citizens in the aftermath of 9/11 indicate that we are still not in a position to trust intelligence agencies to stay within the law if left unsupervised. Human intelligence activities have similarly run into difficulties abroad, as in the case of the scandal which surrounded the British Intelligence Corps’ Force Research Unit, which allegedly colluded

with Loyalist paramilitaries in Northern Ireland to murder suspected Nationalist terrorists and their sympathizers. Mercifully, with the exception of the cases of Maher Arar and a handful of other victims of rendition, the Canadian security and intelligence services have managed to avoid recent scandal. We have no guarantee that this will always be the case.

Strong oversight of the security and intelligence community is currently lacking in Canada. No changes to the intelligence oversight mechanisms have been made to address the expanded mandates of the intelligence services. This reality was made abundantly clear by the 2006 O’Connor report, which called for independent civilian review of the RCMP’s national security functions. This recommendation has not yet been implemented. As Maher Arar, to whom the RCMP was forced to apologize for its role in his deportation to Syria, noted in a recent article in the *Globe and Mail*, “There is no review body that has the power or mandate to look into the interrelated activities of these departments and agencies and hold them accountable. ... Successive governments have understandably spent hundreds of millions of dollars on bolstering our security, but they have spent little on protecting our rights from the potential abuses that may take place due to the expanding powers granted to our national security agencies.”

Absence of proper oversight is not merely an issue of human rights; it is also an issue of practical efficiency. Inadequately supervised organizations are unlikely to use resources in an optimal manner. Furthermore, when it becomes known, as it always eventually does, that intelligence agencies have broken the law or acted immorally and have not been held accountable for their actions, public faith in these institutions declines. Yet, in the realm of human intelligence in particular, public faith is essential to the gathering of reliable information. In short, far from undermining the intelligence services, enhanced democratic accountability should strengthen their ability to do their job well.



But there are few models of oversight that Canada can readily copy. The US system is theoretically the most robust: in a series of legislative acts from the 1974 Hughes-Ryan amendment onwards, Congress has granted itself considerable powers to oversee the activities of the US intelligence community. The Senate and House intelligence committees and their staff receive thousands of written and oral briefings annually. Indeed, some members of the intelligence community have complained of being ‘swamped’ by requests for information from Congress. By law, the committees must also be informed in advance of all covert operations being conducted by the intelligence services. In principle, these measures should provide a significant check on illegal activity. They should also enhance efficiency by giving Congress the opportunity to utter a word of caution before unwise and potentially counterproductive or wasteful activities are undertaken.

While in theory this system seems adequate, in practice it is not working well. That is not to say that the United States would be better off without it – the situation then might be even worse – but still, it is not working well. The wiretap scandal is a good example: illegal eavesdropping was discovered and revealed not by Congressional committees but by the *New York Times*, and the response of Congress was not to hold the guilty to account, but rather to grant a blanket immunity from prosecution to the communications companies who cooperated with the government in breaking the law. Moreover, the oversight process did not prevent major intelligence failures, such as those connected with Iraqi supposed weapons of mass destruction.


There are many reasons for these lapses. One is that the oversight system has become politicized, with committee members divided along party political lines preventing a thorough investigation of failures. Another problem is that the Congressional committees have become so intrusive that they have, to some extent, ceased to be independent monitors standing

outside of the intelligence community, and instead have become part of the management structure of the system they are meant to be overseeing. For instance, Congress was not well placed to examine the causes of the WMD failure because it was itself partly to blame, having been briefed on the subject for years without ever pointing out the flaws in the analysis.

In any case, the American oversight mechanism is not transferable to Canada, as Canadian parliamentary committees lack the powers of Congressional ones. What is more, it is hardly plausible that any Canadian prime minister would choose to grant them such powers, especially on issues of national security. As a result, Canada is left with the option of a weak parliamentary oversight committee, such as the British one, whose very weakness rules it out as a robust tool for ensuring democratic accountability, or some independent review body such as SIRC, possibly with increased powers. Post-facto review is not, however, the same as oversight, which takes place before and during intelligence operations. Post-facto reviews are only able to address failings that have already occurred. They cannot prevent failings from occurring in the first place (except by means of deterrence – the knowledge that an action may be reviewed may deter people from carrying it out).

Overcoming this problem requires improved control and oversight on at least four levels: 1) within the agencies through the office of their directors; 2) at the level of the executive branch, through the Inspector General of CSIS, for instance; 3) outside the executive, through Parliament or some other state agency, such as SIRC; and 4) at the level of the general public. Accountability must be improved at all levels. The office of the CSIS Inspector General requires strengthening; some system of parliamentary involvement should be considered, and if this is not possible, some independent body with the power of oversight as well as post-facto review should be created; and greater transparency and less secrecy can be introduced to ensure that the public can satisfy

itself that state agencies are behaving efficiently or appropriately.

A major scandal or a significant intelligence failure could have highly deleterious consequences both for national security and for the intelligence and security services themselves. It is better to act early to prevent such events than to be forced to react after they have occurred. It remains to be seen, however, whether the Canadian political system is capable of enacting reform of the kind that the intelligence community requires in order to function effectively and retain public trust in the post-9/11 era. If it is not, then the expanded mandates of the intelligence and security services may need to be reconsidered. 

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