

subversion” and would not have allowed for intrusive investigative techniques under this heading.

In accepting the recommendations of the Independent Advisory Team (IAT), the Solicitor General ordered CSIS's Counter-Subversion Branch dismantled in 1987. Most of the Counter-Subversion Branch targets were discontinued. Its remaining targets were divided among the Counter Intelligence, Counter Terrorism, and Analysis and Production Branches. Since 1988, any investigation by the Service under paragraph (d) involving more than the collection of open source information requires, under a ministerial direction to that effect, the approval of the Solicitor General. No such ministerially-approved intrusive investigations have been authorized since the direction was issued in February 1988.

Paragraph (d) is by far the most controversial provision addressed by the Committee in this Report. Those who call for the repeal of paragraph (d) see it as having a chilling effect on rights and freedoms. They argue that the vagueness of this provision leads to excessive speculation on the ultimate effect of the exercise of guaranteed rights and freedoms and, consequently, to uncalled-for targeting of legitimate activity. They also say that since the Counter-Subversion Branch of CSIS was disbanded in 1987, it is now time to repeal paragraph (d) of the definition of threats to the security of Canada as a spent provision.

Those who argue in favour of retaining paragraph (d) admit that the activities it covers do not constitute a major threat to the security of Canada at present and that many of the activities it encompasses may be captured by paragraphs (b) and (c) of the definition. But they go on to argue that Canadians expect CSIS to be in a position to forewarn the Government of Canada about potential threats to the security of Canada, especially if the activities dealt with by paragraph (d) again become a significant threat at some future time.

This was one of the most controversial and difficult issues addressed by the Committee in conducting this comprehensive review. The divergent points of view are strongly held and vigorously expressed. After a thorough discussion of the implications of a number of options to deal with this part of the definition, the Committee, although not unanimously, came to the conclusion that paragraph (d) should be repealed. Many of the activities, it was felt, now caught by paragraph (d) could be dealt with under paragraphs (a), (b) and (c) of the definition, even if the Committee's recommendations in relation to them are implemented. If paragraph (d) is repealed, a consequential amendment to section 21(5)(a) of the Act limiting judicial warrants to sixty days would also have to be adopted.

#### **RECOMMENDATION 10**

**The Committee recommends that paragraph (d) of the definition of threats to the security of Canada contained in section 2 of the *CSIS Act* be repealed.**