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**CSIS'S ROLE IN THE  
PASSENGER PROTECT PROGRAM  
(SIRC STUDY 2011-01)**

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## EXECUTIVE SUMMARY

This review examines CSIS's participation in the Passenger Protect Program (PPP) by looking at the internal processes and policies guiding CSIS in this role, the criteria CSIS uses to nominate an individual to the Specified Persons List (SPL), and the "lessons learned" from the program's first four years.

The PPP has been hampered by significant challenges and deficiencies not of the Service's making - notably the lack of clarity with respect to the threshold of "immediate threat" and information security issues - which have substantially undermined the potential of the SPL to be an effective aviation security tool.

Despite these issues,

The review found that, in spite of the lack of clarity with respect to immediate threat, the Service did not take steps to formalize an explicit, consistent set of criteria to guide its nomination process.

The review also found inconsistencies in CSIS's approach to its nominations.

A second area of inconsistency concerns whether, and under what circumstances, secret information should be used to corroborate Service nominations. Initially, the Service took a conservative approach and included those whose nominations could be supported mainly or primarily through open source information. A review of the list reveals a movement away from that initial posture, leading the review to the finding that there should be clear and explicit parameters around the level of risk associated with the disclosure of secret information that the Service is willing to accept as a trade-off for contributing to greater aviation security.

Overall, SIRC found that the lack of a clear statutory definition, as well as a lack of internal guidance, has resulted in the Service taking what appears to be a somewhat ad hoc approach to nominating individuals to the SPL. The review concludes with a recommendation that, as long as the Service continues to nominate names for the SPL, CSIS should develop, in the near future, a consistent set of criteria to evaluate its potential nominations, recognizing that they may need to be updated or amended

regularly as the program evolves.

## 1 INTRODUCTION

The Passenger Protect Program (PPP) and its Specified Persons List (SPL) were implemented in June 2007 under the *Aeronautics Act*. The program is intended to identify individuals who may pose a threat to aviation security and to disrupt their ability to cause harm or threaten aviation by taking action, namely by preventing them from boarding an aircraft. The SPL is similar to lists in different jurisdictions and organizations, all part of a trend aimed at improving aviation security, post 9/11.<sup>1</sup>

The PPP is currently administered by two departments: Public Safety Canada, which determines whether there are reasonable grounds to suspect that an individual poses a threat to aviation security, and Transport Canada, which provides the name, date of birth and gender of specified individuals to air carriers.<sup>2</sup> It is the airlines' responsibility to compare passengers' names with the specified names and to notify Transport Canada of a potential match. Transport Canada must in turn determine what action, if any, should be taken to ensure that aviation security is maintained. At present, the range of actions that Transport Canada can direct is limited to "board" or "no-board".<sup>3</sup> The program extends to direct flights to Canada from international destinations and to flights within and departing from Canada.

Along with the RCMP, CSIS participates in the PPP by nominating specific individuals it assesses warrant inclusion on the SPL, known as the "no-fly" list. All nominations are reviewed by the SPL Advisory Group (SPLAG), which is chaired by Public Safety and

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<sup>1</sup> It is reported that there are approximately 6,000 names on the US no-fly list and 18,000 on the US "selectee" list that includes individuals who should be subject to secondary screening. In 1999, the United Nations established its own list of individuals and entities "belonging to or associated with the Taliban and Al-Qaida". The sole Canadian on the list is Abousfian Abdelrazik. In the wake of the attempted Christmas bomb plot of 2009, Great Britain introduced in 2010 a package of security measures, including a no-fly list of its own.

<sup>2</sup> As of February 2011, responsibility for the PPP has been split between the Ministers of Transport and Public Safety. Previously, Transport Canada was solely responsible for the PPP. As of May 2011, there are

<sup>3</sup>

includes CSIS, the RCMP and Transport Canada as members. When supported, the nomination is submitted to the Minister of Public Safety, who is the ultimate decision-maker with respect to the composition of the SPL.

SIRC's review examined CSIS's participation in the PPP, specifically by looking at the internal processes and policies guiding CSIS in its role, the criteria CSIS uses to nominate an individual, and any "lessons learned" from the program's first four years.

The review found that the PPP was initially a temporary program that was developed to demonstrate a higher level of aviation security

SIRC found that the existing PPP has been hampered by significant challenges and deficiencies, which have substantially undermined the potential of the SPL to be an effective aviation security tool. SIRC further found that there are no clear criteria to guide the nomination process.

Under pressure to participate in the program, the Service's initially cautious approach mitigated, to a large extent, issues in the PPP related to information security and the ambiguity of the statutory definition. Over time, however, there has been an incremental departure from this cautious approach, leading SIRC to conclude that the Service's practices with respect to nominating names for the SPL have not been consistent. SIRC recommends that CSIS develop, in the near future, a consistent set of criteria for potential nominations, recognizing that they may need to be amended over time.

## 2 METHODOLOGY

The objective of this review was to examine CSIS's involvement in the PPP by reviewing and assessing the processes and policy framework governing the Service's nomination of individuals to the SPL.

The review consisted of both document review and briefings. In addition, SIRC requested a list of names placed on the no-fly list based on CSIS information and, from that, selected a sample group for closer examination. For each individual selected, SIRC reviewed all relevant documentation, as well as all documents CSIS shared with the SPLAG<sup>5</sup> and/or Transport Canada for the purposes of nominating individuals to the no-fly list.

The review covers the period from the inception of the no-fly list program in June 2007 to September 2010.

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<sup>5</sup> In the PPP, nominations are presented to the SPLAG in the form of a data sheet that includes a synopsis of the threat information and assessment connecting the individual with aviation security, as well as the relevant biographical information,

### 3 PASSENGER PROTECT PROGRAM

The PPP was designed to act as an “essential component in Canada’s multilayered approach to security.”<sup>6</sup> Yet, SIRC’s review found that substantial issues have impeded its functioning: a statutory threshold that is difficult to meet in practice, and that has led to uncertainty among nominating departments over the criteria for inclusion on the SPL; and These program deficiencies contribute, in our view, to inconsistencies in the Service’s approach to nominations.

#### 3.1 Definition

Under the PPP, a person on the SPL can be denied boarding if it is believed that he/she poses an “immediate threat” to aviation security, a threshold rooted in the *Aeronautics Act*.<sup>7</sup> The concept of “immediate threat” is open to differing interpretations; as a result, nominating departments and agencies have struggled with the nomination process. The lack of clarity has also been the subject of public debate as well, with civil liberties associations, among others, taking aim at what they see as the program’s lack of clear boundaries and legislative mandate.<sup>8</sup>

To complement the *Aeronautics Act*, Transport Canada developed program guidance materials that included three broad categories of individuals who could be included on the SPL. Of the three, two pertain to individuals convicted of certain types of offences and thus relate mainly to the RCMP. The third - “an individual who is or has been involved in a terrorist group, and who it can reasonably be suspected, will endanger the security of any aircraft or aerodrome or the safety of the public, passengers or crew members ...” - is more aligned with threats investigated by CSIS.<sup>9</sup> Unfortunately, this

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<sup>6</sup> [Http://www.passengerprotect.gc.ca/home.html](http://www.passengerprotect.gc.ca/home.html)

<sup>7</sup> Section 4.76 of the *Aeronautics Act* states that “[i]f the Minister is of the opinion that there is an immediate threat to aviation security or to any aircraft or aerodrome or other aviation facility, or to the safety of the public, passengers or crew members, the Minister may direct any person to do, or to refrain from doing, anything that in the opinion of the Minister is necessary to do or refrain from doing in order to respond to the threat...”.

<sup>8</sup> See, for example, comments by Micheal Vonn, Policy Director, British Columbia Civil Liberties Association, before the Standing Committee on Public Safety and National Security on April 29, 2010: “if you are wondering how a person is vetted months or even years in advance as being, as per the legislation, an ‘immediate’ threat, it was explained to me thus: a person is considered a generic threat, and then they become an immediate threat the minute they try to get on a plane”.

<sup>9</sup> These program guidance materials are publicly available on the Internet - <http://www.tc.gc.ca/eng/mediaroom/releases-nat-2006-06-gc014e-2031.htm>

categorization of individuals offered little in the way of clear boundaries<sup>10</sup>. On the one hand, a narrow interpretation requiring a direct link to aviation security could yield few nominations and risks missing potentially valid candidates. On the other hand, a broad interpretation could implicate anyone who is, or has been, involved in any capacity with a terrorist group that is seen to pose a threat to aviation security. SIRC was advised that the proposed categorization was not used by nominating departments.

In response to ongoing concerns with the threshold for nomination, in late 2009, Transport Canada put in place a short-lived system aimed at improving the process of identifying threats to aviation security referred to as the "Three Stage Process". This consisted of a system of scoring candidates based on historical, capacity and intent indicators to offer a more transparent and straightforward way of assessing potential nominees.

It was made clear to SIRC during its briefings with CSIS that uncertainty with respect to the meaning of "immediate threat" remains, despite the passage of four years.<sup>12</sup> The Service is not alone in this. Indeed, an assessment of the program by Public Safety since it assumed responsibility for the PPP contains the following statement -

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<sup>10</sup> This method of categorization has not been adopted by Public Safety.

<sup>11</sup> Transport Canada has also offered at least one interpretation of "immediate threat". According to an internal Transport Canada report, "[t]he concept of immediacy...is not confined to the element of time...For these purposes, immediacy also relates to the likelihood of an individual attempting an action in the future". See "What is it exactly that gets you on a no-fly list?", Macleans.ca, August 30, [Http://www2.macleans.ca/2010/08/30/how-to-decide-whos-dangerous/print/](http://www2.macleans.ca/2010/08/30/how-to-decide-whos-dangerous/print/)

<sup>12</sup> Second SIRC briefing, May 19, 2011.

### 3.2 Information Security

As originally conceived,

As it stands,

As a result,

Information security was explored in an audit of the PPP by Canada's Privacy Commissioner, in 2009. The audit reported that most domestic airlines use an automated system to check the passenger manifests against the list.

The Privacy Commissioner noted that Transport Canada had not extended its oversight activities to verify that airlines are aware of and complying with all the requirements related to the handling of the SPL, important given the sensitivity and personal nature of the information contained therein.<sup>16</sup> The audit did not cover the procedures of the foreign airlines that are privy to the SPL.

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<sup>16</sup> Transport Canada's response to this was: "Transport Canada agrees with the recommendation. Although not conducted at the time of the audit, as of June 2009, the department has been inspecting air carriers to verify compliance with all requirements of the Identity Screening Regulations as they relate to the handling and safeguarding of the Specified Persons List Information". Available on the website of the Office of the Privacy Commissioner. SIRC is unable to verify the changes that have taken place in that regard.

## 4 CSIS PARTICIPATION

As of the end of May 2011,  
SPL,

names on the

underpinning CSIS's nomination  
advice CSIS provided to Transport Canada was consistent with original reporting and  
conformed to the requirements of the program.

SIRC also reviewed the information  
to assess whether the

### 4.1 CSIS Policy

At the same time, there is evidence of substantial pressure from Transport Canada,

an unclear statutory definition,

#### 4.2 Link to Aviation

First, SIRC noted that  
threats to aviation security,

the guidance materials developed by

Transport Canada,<sup>23</sup> The statutory threshold of "immediate threat" suggests the need for a strong link to aviation security.

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<sup>23</sup> In Transport Canada's three categories of individuals who could be included on the SPL, the one that was most directly linked to CSIS (the other two categories are more aligned to the mandate of the RCMP) is: "an individual who is or has been involved in a terrorist group, *and* who it can reasonably be suspected, will endanger the security of any aircraft or aerodrome or the safety of the public, passengers or crew members ...". Emphasis added.



Although the Service has expressed support for such a system, at present it does not exist.

#### **4.3 Use of Secret Information**

A second area of inconsistency concerns whether, and under what circumstances, secret information should be used to corroborate Service nominations.

Our review noted that, after the individuals nominated in 2007,

**SIRC**  
believes there should be clear and explicit parameters around the level of risk associated with the disclosure of secret information that the Service is willing to accept as a trade-off for contributing to greater aviation security.

## 5 ISSUE FOR CONSIDERATION

### 5.1

SIRC has identified two areas of concern that are important because,

In addition to these two areas,

raised questions for SIRC with respect to

Though SIRC is satisfied that the Service has employed a generally cautious approach, **overall, SIRC found that the lack of a clear statutory definition, as well as a lack of internal guidance, has resulted in the Service taking what appears to be a somewhat ad hoc approach to nominating individuals to the SPL.**

At the same time, SIRC recognizes the Service's responsibility to participate in this process. As long as the Service continues to nominate names for the SPL, **SIRC recommends that CSIS develop, in the near future, a consistent set of criteria to evaluate its potential nominations, recognizing that they may need to be updated**

**or amended regularly as the program evolves.** As noted, the criteria should take into consideration, *inter alia*, the link to aviation security, as well as

This would add greater consistency to the Service's own decision-making. A more structured approach would also make it easier to defend these decisions should the need arise. Considered, explicit criteria and a consistent approach with respect to information security are especially critical

## 6 CONCLUSION

At the time of writing, there is a high degree of flux in the administration of the PPP owing to the recent February 2011 transfer of responsibility for the program from Transport Canada to Public Safety.

At the same time, recalling

there is an expectation that there will be changes to the program.<sup>40</sup> Perhaps because of this, SIRC was told that discussions are taking place on whether to  
There are also continuing discussions on the merits of adopting

For the moment, however, the program

As CSIS continues to nominate individuals for the SPL, SIRC encourages CSIS to develop a more rigorous and consistent approach to its involvement in the program to ensure

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<sup>40</sup> The judicial review may also require program changes.