



Communications
Security
Establishment
Commissioner

Annual Report

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Canada 

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Communications Security
Establishment Commissioner



The Honourable Claude Bisson, O.C.

Commissaire du Centre de la
sécurité des télécommunications

L'honorable Claude Bisson, O.C.

May 2000

The Honourable Arthur C. Eggleton, P.C.
Minister of National Defence
MGen G.R. Pearkes Building, 13th Floor
101 Colonel By Drive, North Tower
Ottawa, Ontario
K1A 0K2

Dear Mr. Eggleton:

Pursuant to paragraph (g) of Order in Council P.C. 1999-1048 re-appointing me Communications Security Establishment Commissioner, I am pleased to submit to you my 1999-2000 annual report on my activities and findings, for your submission to Parliament.

Yours sincerely,

A handwritten signature in black ink that reads "Claude Bisson". The signature is written in a cursive style with a large, decorative flourish on the left side. Below the signature is a horizontal line.

Claude Bisson

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A New Mandate

For the past four years I have had the responsibility of reviewing the activities of the Communications Security Establishment (CSE) and reporting to the Minister of National Defence on the lawfulness of those activities.

My initial three-year mandate was set out in a 1996 Order in Council of the Government of Canada under the *Inquiries Act*. On June 15, 1999, the Minister of National Defence announced that the government had renewed my appointment for another three years and enhanced my mandate by increasing my authority to respond to complaints about CSE. A copy of the new Order in Council appears as Annex A of this report.

This Annual Report – my fourth – covers the first year of my second mandate, up to the government's fiscal year end of March 31, 2000.

The task of reviewing CSE is an important and necessary one in a democratic society. An agency of Canada's Department of National Defence, CSE provides the Government of Canada with foreign signals intelligence (SIGINT), which it obtains by gathering and analyzing foreign radio, radar and other electronic emissions. Through its Information Technology Security program, CSE also provides advice on the security of the government's information technology.

To fulfil its mandate, CSE has, over the more than five decades of its existence, developed highly sophisticated technological capabilities. One of my functions is to review CSE's activities to ensure that the organization does not use its capabilities in ways that contravene the laws of Canada.

1999-2000 Review Undertakings

During this past year, I submitted four classified reports to the Minister of National Defence. One of these reports revisited the subject of internal investigations and complaints. The remaining reports presented the results of reviews of CSE activities related to its foreign signals intelligence and information technology security mandates. All studies included an examination of the legal parameters within which CSE operates, related policies and practices, and the accountability systems and procedures in place at CSE. None revealed issues of unlawful activity.

Internal Investigations and Complaints

When I first reviewed CSE's internal investigations and complaints in 1997-98, I observed that most dealt with such issues as security infractions, and none involved unlawful activity in the delivery of CSE's mandate. This was again the case this past year. In the interim, CSE implemented many new internal security policies and initiatives to heighten security awareness. These appear to have proven effective, in that there were far fewer incidents leading to internal investigations this past year than in 1997-98.

Foreign Signals Intelligence

In reviewing CSE's signals intelligence activities this past year, I noted a continuing enhancement and updating of SIGINT policies and directives in response to the evolving communications environment. I also observed new initiatives introduced by CSE to enhance its ability to manage and account for its SIGINT-related activities.

I paid particular attention this year to examining not only *what* CSE collects and retains, but *how* CSE's intelligence holdings are generated. As a result, I was able to further my knowledge and understanding of some of the highly specialized and technical means used to minimize the likelihood that private Canadian communications would make their way into CSE's

holdings. I am able to state that, as of this date, I am satisfied that, within the current technical environment, CSE is employing appropriate measures to safeguard the privacy of Canadians.

The Intelligence Cycle

In last year's report, I observed that CSE's activities are driven by its mandate to fulfil the foreign intelligence requirements established by the Government of Canada, not by the capabilities of the technology at hand.

Those requirements, in the form of foreign intelligence priorities for Canada's intelligence community, are set annually by a group of Cabinet ministers whose responsibilities touch on the country's security within Canada and abroad. The establishment of the Government of Canada's intelligence priorities is the first step in what the intelligence community calls the "intelligence cycle." It is worth examining that cycle briefly and looking at CSE's role in it.

The Government of Canada's foreign intelligence priorities form the basis of CSE's yearly SIGINT program. That is to say, these priorities are conveyed formally to CSE by the Deputy Secretary to the Cabinet, Security and Intelligence, Privy Council Office. CSE then uses these priorities to determine what information it seeks to obtain, either from its own activities or from the activities of its partner agencies in the United States, the United Kingdom, Australia, and New Zealand.

Concurrent with this, CSE must ensure that the appropriate steps are always taken to minimize the likelihood of intercepting the private communications of Canadians.

Next, CSE receives the inflow of intelligence traffic from multiple sources – its own and those of its partners. This traffic is then processed, analyzed

and assessed against the government's intelligence priorities. The resulting intelligence product is disseminated to the government departments responsible for protecting Canada's security, intelligence, economic and defence interests.

Intelligence dissemination is facilitated by knowledgeable CSE staff who provide a tailored and timely intelligence delivery service to some 800 senior decision makers in government on ongoing and emerging issues. This regular contact with the users of CSE's intelligence product ensures that requirements are updated and feedback is incorporated in the production process.

The intelligence cycle provides me with one framework for reviewing CSE's activities. I can examine the lawfulness of CSE's activities at each stage of the cycle. Through this work, I keep abreast of foreign intelligence collection capabilities and practices, signals processing, signals and intelligence analysis, and the dissemination of intelligence product to CSE's clients in government.

I believe the exploding yield of information carried by global communications networks increases the need to ensure that the privacy of Canadians is protected. I continue working to identify and understand the numerous technological initiatives that support intelligence gathering. I am also increasing my understanding of *how* some of these initiatives are applied. Within this intelligence cycle, however, my interest remains the identification and examination of any technical applications and initiatives CSE uses to *avoid*, or at least minimize, the likelihood of private Canadian communications making their way into CSE's holdings.

I am able to report that CSE has undertaken initiatives to advance its technological capability to ensure the protection of private Canadian communications. CSE is aware of both my interest in this area and the importance I attach to assessing compliance. I encourage CSE's research and development initiatives in this fast-paced technological environment.

'Second Party' Collection

As noted earlier, CSE receives signals intelligence gathered by other governments. CSE also contributes intelligence it collects to other governments. These partnership arrangements – with the United States, the United Kingdom, Australia, and New Zealand – were developed during the Second World War and maintained throughout the Cold War. Signals that are provided by one country to another are described as 'second party' collection.

The governments of the countries involved in this exchange of intelligence have policies to ensure the privacy of their citizens. In particular, each government has agreed not to undertake collection on behalf of a second party that would be illegal in the second party country. In other words, they do not do indirectly what they cannot do directly.

I have made a point of developing an understanding of these collaborative relationships, focusing not only on shared policies but also on actual practices. I have sampled the documentation and had access to some of the systems that support intelligence gathering and exchange. At this time I am satisfied that CSE is taking all reasonable steps to safeguard the privacy of Canadian communications.

Information Technology Security

Over the past four years, I have focused much of my effort on CSE's SIGINT activities. However, CSE has another important role in government – its Information Technology Security (ITS) mandate: CSE advises the government on how to maintain security in its use of information technology.

This year, my Office conducted an in-depth examination of the ITS program to determine whether its activities were lawful. The study involved, first, a review of CSE's ITS authorities and mandate as provided in direction given to the Chief, CSE. This was followed by an examination of the management control framework established to govern the conduct and performance of ITS activities. Step three was an analysis of the environmental factors and changing circumstances affecting the government's security requirements. Finally, strategies, plans, operations and projects were reviewed against the template established by the preceding steps to identify issues or activities for further exploration.

No evidence of unlawful activity was found. However, the study did reveal several pertinent facts:

- The trend in government and the private sector toward increased electronic business and service delivery is radically transforming the ITS program. Whereas previously the program's focus was the protection of classified information about a small number of government clients, now it is called upon increasingly to advise on protecting unclassified but sensitive information, including the electronic business transactions that underpin many government programs and operations.
- If Canadians are to have confidence in electronic commerce and the infrastructure that makes it possible, the government must have "made-in-Canada" solutions to security concerns. CSE is

well equipped to play a key role in this, but it must be given clear direction by government on this sensitive issue.

- For example, one effective means of confirming the security of information infrastructure is to attempt to penetrate the defences (e.g., to test so-called firewalls). This is called “ethical hacking.” CSE does not conduct such penetrations of active systems because this could reveal personal data, with privacy implications. However, the result is that mission-critical information technology systems are not tested for the full range of threat scenarios facing those systems.

Henceforth, I will closely monitor ITS involvement in these activities to ensure they comply with prevailing constraints. I also would encourage the government to give CSE clear policy direction regarding the role it should play in ensuring the security of Canada’s information infrastructure.

Budget and Staff

My annual budget allocation for the year 1999-2000 was augmented to \$635,500 to provide for additional expenses, including counsel, in support of my expanded complaints function. I can report that actual expenses incurred were within budget.

In addition to two full-time staff, I have continued the practice established during my first mandate of hiring subject matter experts under contract. At present, I have six contractors performing specialized work under this arrangement, all of whom have been security cleared for the purpose of their work.

As I have indicated in the past, I believe I have adequate financial and personnel resources to carry out the mandate I have been given.

1999-2000 Findings

Based on the results of our review and analysis, I am of the opinion that CSE has acted lawfully in the performance of its mandated activities for the period under review. I am also satisfied that CSE has not targeted the communications of Canadian citizens or permanent residents of Canada.

These findings are consistent with those from previous years, since the creation of this Office. Through the process of study and review, I am advancing my knowledge and understanding of how CSE conducts its mandated activities. As my depth of knowledge increases, so does the certainty of my approach to assessing the lawfulness of these activities. Of particular importance to me is the increasing confidence with which I can state my findings.

By their very nature, foreign intelligence activities raise questions, and sometimes concerns, on the part of the private citizen. And I can attest to the technical, legal and ethical complexity of the intelligence cycle. I believe, therefore, that the existence of my Office since 1996 has been a necessary and appropriate addition to Canada's intelligence community. It has been my experience that, since 1996, CSE's policies, procedures and, most important, its practices have reflected the presence of my Office and my review parameters as established by the Government of Canada.

This combination of advancing capabilities on the part of my Office and improved policies and practices on the part of CSE augurs well for the future. Nevertheless, I intend to remain vigilant in reviewing the activities of CSE, and I will ensure that our increasing abilities are applied robustly as I fulfil the responsibilities of this Office.

The Complaints Function

This was the first year in which I had the authority to respond directly to individuals who raise complaints about CSE's activities. Previously, under my original mandate, I could receive such complaints but I was not able to report to the complainants about my findings. I was pleased when this limitation was removed when my mandate was renewed.

To help members of the public understand the role of my Office, and in particular the complaints function, we published a brochure, *Safeguarding the Privacy of Canadians*. The brochure notes that because complaints may contain sensitive information or may affect the privacy of Canadians, my Office will accept complaints only by mail, addressed to me. Copies of the brochure are available upon request.

My background and training in arbitration and mediation before I became Commissioner have made me a strong advocate of the benefits of alternative dispute resolution. By bringing the two sides to a dispute together to seek a mutual solution, alternative dispute resolution can reduce both conflict and costs and lead to a settlement that leaves both sides satisfied. For this reason, I have incorporated alternative dispute resolution processes into the Office's mechanisms for addressing complaints.

During the past year, I responded to a number of enquiries from concerned individuals. I can report, however, that no formal complaints were received by my Office.

Anonymous Allegations

One option open to me in reviewing the activities of CSE is to guarantee anonymity to people, particularly current or former employees, who come to me with allegations of illegal activity by CSE. Some observers believe such an offer would enhance my ability to determine whether such activities were taking place.

I do not believe guaranteed anonymity for accusers is the right way to go. This approach would have the potential to poison the operating environment at CSE, or at any other institution with such a guarantee. Managers and co-workers could easily become reluctant to offer necessary criticisms and critiques of the work of other employees for fear that an offended employee could make anonymous unfounded accusations against them.

For these reasons, the complaints procedures I have established for this Office do not shield the identity of people who bring forth allegations of illegal activity by CSE. It is my belief that, by putting the appropriate mechanisms in place in an environment designed to address issues constructively, complainants will feel compelled to come forward, in good faith, to raise legitimate concerns. At the same time, I will not hesitate to use all the authority of my Office to ensure that complainants acting in good faith do not suffer reprisals from any quarter, regardless of the ultimate disposition of the issues they raise.

Building Relationships

The ability of my Office to review the activities of CSE can be enhanced by the relationships we have with stakeholders beyond CSE itself. During 1999-2000, two developments served to strengthen this Office's relationships with others.

DND Ombudsman

In June 1999, the Minister of National Defence announced the mandate of André Marin, the Ombudsman for the Department of National Defence (DND) and the Canadian Forces. The Ombudsman is designated to act on the Minister's behalf, independent of the chain of command, as a neutral and objective sounding board, mediator and reporter on matters related to the Department of National Defence and the Canadian Forces.

Because the Communications Security Establishment is an agency of DND, there is potential overlap between my role and that of the Ombudsman. In the autumn of 1999, Mr. Marin and I met to discuss our respective mandates as well as to establish clear boundaries and procedures for cooperation between our two Offices. We agreed the Ombudsman has an important role in addressing issues raised by CSE employees, but that role does not extend to activities related to the mandate of CSE. In other words, it is my responsibility to deal with issues involving CSE's SIGINT or ITS activities.

We are confident that, between the two of us, we can effectively and efficiently address any concerns that may arise about CSE.

International Conference

At the international level, the second conference of Inspectors-General and Review Agencies, which took place in Ottawa in June 1999, gave me an opportunity to discuss mutual interests with colleagues from Australia, New Zealand, the United Kingdom, the United States, Belgium and South Africa. The event was hosted by Canada's Security Intelligence Review Committee, the agency responsible for reviewing the Canadian Security Intelligence Service. The first such conference took place in Canberra, Australia in 1997.

Among the topics of discussion at the conference were relations between review organizations and legislators, and relationships with the media. The participation of Canadian parliamentarians and journalists made these sessions particularly informative. Equally valuable were the formal and informal exchanges with people from other countries who have responsibilities similar to my own. By comparing experiences, we learned how others have addressed the challenges we share.

The Future of Review for CSE

In prepared remarks to the conference of Inspectors-General and Review Agencies, I noted that over the past decade or two, many of our governments have increased their efforts to monitor and report on the lawfulness of their intelligence agencies – a trend I said was likely to continue. Government actions in this regard have been deliberate and carefully thought out, in keeping with the importance and sensitivity of intelligence activities, but the direction is clearly toward greater openness and increased accountability.

I noted that a key issue in the Canadian context is whether the Government of Canada should introduce legislation for CSE. I observed that any such legislation would likely include the creation of a permanent review mechanism in place of my fixed-term appointment by Order in Council.

As I have said before, I believe that legislation for CSE would be an appropriate development. However, if and when the government decides to move in this direction, it should act with the same caution and deliberation that have been the hallmarks of western governments in dealing with their intelligence agencies. In my view, the arrangements now in place to review CSE are entirely effective, and there is no urgency to alter them independent of the larger issue of whether CSE should have a legislative base. Permanent review arrangements should reflect the foreign intelligence nature of the work of CSE and the degree to which CSE could infringe on the rights and privacy of Canadians in fulfilling its mandate.

My New Website

Last year saw the launch of the official website of the Office of the Communications Security Establishment Commissioner. My objective with the site is to make information about this Office more readily available to the growing number of Canadians with access to the Internet. The site provides background on the mandate and functions of the Commissioner and access to my annual reports. The website address is <http://csec-ccst.gc.ca>.

People and Places

One of the challenges facing CSE in the past was that its employees were scattered in several buildings in Ottawa. That situation improved with the recent acquisition of the former Canadian Broadcasting Corporation headquarters, which is close to the main CSE facility, the Sir Leonard Tilley Building. The new building – now named the Edward Drake Building in honour of the first head of CSE's predecessor organization, the Communications Branch of the National Research Council – will allow CSE to consolidate most of its operations in the two buildings, under the leadership of its new Chief, Mr. D. Ian Glen.

On a separate note, the government and the people of Canada lost an outstanding public servant with the death in August 1999 of Mr. John Tait. I had the honour of knowing Mr. Tait when he was Deputy Minister of Justice and I was Chief Justice of Quebec. When I took on this job, he was the Coordinator of Security and Intelligence in the Privy Council Office and thereby the Deputy Minister responsible for CSE's policy and operations. Among his many other contributions to the government was a 1997 report on public service values and ethics, produced by a task force that he chaired. The document, now widely known as the Tait Report, has helped generate a strengthening of values-based governance in the Government of Canada.



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1999-1048

June 8, 1999

His Excellency the Governor General in Council, on the recommendation of the Minister of National Defence, pursuant to Part II of the *Inquiries Act*, hereby authorizes the Minister of National Defence (in this order referred to as "the Minister")

(a) to re-appoint the Honourable Claude Bisson of Montreal, Quebec, for a period of three years, as a commissioner ("the Commissioner") to review the activities of the Communications Security Establishment ("CSE") for the purpose of determining whether those activities are in compliance with the law;

(b) to authorize the Commissioner to commence that review on his own initiative or at the request of the Minister;

(c) to authorize the Commissioner to investigate any complaint, concerning the lawfulness of CSE activities, made by any individual who is a Canadian citizen or a permanent resident of Canada;

(d) to authorize the Commissioner not to investigate complaints for which, in the Commissioner's opinion, other avenues of redress are established by statute;

(e) to specifically authorize the Commissioner to inform any complainant of the results of his investigation, ensuring that no classified information is disclosed to the complainant;

(f) to direct the Commissioner to inform the Minister and the Attorney General of Canada of any CSE activity that the Commissioner believes may not be in compliance with the law;

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(g) to direct the Commissioner to submit to the Minister, once each year and in both official languages, a report on the Commissioner's activities and findings that are not classified, which report the Minister will table in Parliament;

(h) to authorize the Commissioner, at any time the Commissioner considers it advisable, to submit a report containing classified information to the Minister;

(i) to direct the Commissioner, before submitting any report to the Minister, to consult with the Deputy Secretary to the Cabinet (Security and Intelligence) at the Privy Council Office for the purpose of ensuring compliance with all security requirements and the preservation of the secrecy of sources of security and intelligence information and of the security of information provided to Canada in confidence by other nations;

(j) to direct the Commissioner and all persons engaged on his behalf take an oath of secrecy and comply with all applicable government security requirements;

(k) to authorize the Commissioner to engage the services of any staff, advisors and counsel that he considers necessary to assist him in the performance of his duties and functions at such rates of remuneration and reimbursement as may be approved by the Treasury Board;

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(l) to fix the remuneration of the Commissioner at the per diem rate set out in the annexed schedule, which rate is within the range of \$400 to \$500; and

(m) to authorize that the Commissioner be paid reasonable travel and living expenses incurred by him in the performance of his duties and functions while absent from his ordinary place of residence, in accordance with Treasury Board travel directives;

effective June 19, 1999.

CERTIFIED TO BE A TRUE COPY--COPIE CERTIFIÉE CONFORME



CLERK OF THE PRIVY COUNCIL--LE GREFFIER DU CONSEIL PRIVÉ