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**CSIS'S RELATIONSHIP WITH
(SIRC STUDY 2011-08)**

**Security Intelligence Review Committee
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1 CSIS AND A SPECIAL RELATIONSHIP

is the Service's most important and one of its most longstanding foreign partners. Despite some significant differences in the mandates of the two agencies, intelligence exchanges with are critical to Canada's national security. The scope of CSIS's cooperation with

While there are a great many instances of fruitful cooperation on several domestic and foreign threats of mutual concern, the relationship has, been beset by irritants in certain areas.² Most significant have been the issues and challenges which have arisen surrounding information-sharing: for CSIS,

Accordingly, SIRC's review of CSIS's relationship with focussed on information-sharing.³ First, we examined how CSIS's relationship with has evolved in recent years and, in parallel, how these developments have generated particular challenges and issues with respect to sharing information - namely concerns over human rights. SIRC then looked at the strategies and procedures CSIS uses to

¹ SIRC Briefing with former CSIS Assistant Director of Operations, February 6, 2012.

² As will be explored in this paper, this includes both major and minor irritants, the former of which will constitute the focus of this review.

³ In this way, the review picks up some of the themes of SIRC's 2005 in-depth examination of CSIS's exchanges of information with close allies, which itself came in the wake of the Maher Arar case.

manage its information exchanges with _____ including seeking guarantees (or “assurances”) from _____ concerning respect for human rights, the introduction of new policies to manage information-sharing, and the expanded use of caveats accompanying the transmission of information.

Overall, SIRC found that there has been significant discussion of the challenges of information-sharing and of the measures needed to manage these exchanges properly. However, SIRC found a lack of clarity and direction in applying those measures, most notably with respect to the issue of assurances. In most cases, the implementation of clear, structured policy is long overdue. As a result, SIRC has made recommendations to guide the completion of appropriate and clear guidelines that reflect current political direction on information-sharing, and the recommendations of judicial inquiries.

Finally, the review examined issues for consideration as the Service continues to manage information-sharing with _____ and identified some best practices that CSIS may wish to apply as it moves forward.

2 METHODOLOGY

SIRC conducted an extensive document review to examine the main discussions that took place between the Service and [redacted] during the review period. SIRC reviewed all corporate documentation concerning exchanges, visits, and management of the relationship through to the highest levels, including correspondence between the CSIS Director and [redacted]. SIRC also examined all operational exchanges from the Service to [redacted] during the review period – approximately [redacted] messages from different operational branches – as well as a sample of CSIS Intelligence Reports (CIRs) and Intelligence Assessments (IAs).⁴

Over the course of the review, SIRC attended several briefings with a number of CSIS personnel, including the former Assistant Director of Operations (ADO), to have input on the management of the relationship from the most senior levels of the CSIS executive; the Director General of [redacted] to capture senior operational management; a member of the [redacted] to understand the relevant CSIS policy; several lower-tier managers, to engage the Service on specific operational questions; and with the [redacted] to understand how incoming [redacted] information is managed and disseminated. Still, given that the relationship with [redacted] touches upon virtually every aspect of CSIS's work, SIRC's review should only be considered a snapshot of a much larger relationship.

The time period of this review ran from January 1, 2009 to December 31, 2010, although key developments which occurred outside the period were taken into account to broaden an understanding of key issues.

⁴ In conducting its documentation review, SIRC paid particular attention to: the use of caveats; discussions regarding the third-party rule or instances of possible breaches of this rule; incidents of labelling/mislabelling of targets/non-targets; discrepancies between messages and facting; the nature of the information being shared on people with shallow association to targets or people of interest; and information being shared on minors.

3 WORKING WITH

Canada's relationship with intelligence community reaches back to at a time when the and Canada's foreign affairs community shared information

The RCMP signed an agreement with making the partnership among the oldest relationships which CSIS inherited following its creation in 1984.⁶ SIRC was told that prior to the mid-1980s, CSIS had few occasions to collaborate closely with for two main reasons: first, the mandates of the two organizations differ, and second,

However, the threat environment changed as increasingly large numbers of individuals from Eastern Europe, North Africa and the Middle East⁷ migrated to Canada, a few of whom brought with them connections to terrorist networks that neither the Canadian nor knew much about. As the focus slowly shifted from counter-espionage to counter-terrorism, the need to increase cooperation significantly became evident. This trend was accelerated by the events of 9/11: concerned with the more globalized nature of terrorism, faced with the stark reality of terrorist capabilities

cooperation and the pooling of resources became both urgent and overwhelming.

⁵ SIRC Briefing with former CSIS Assistant Director of Operations, February 6, 2012

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⁷ Notably due to the fallout from the Soviet war in Afghanistan.

3.1 Concerns over Information-sharing with

3.1.1 Human Rights

Arrangement Profile¹²

CSIS noted that

In its most recent Foreign

It is not possible for SIRC to offer an independent assessment of the human rights record of and its activities.

¹² CSIS is required to prepare annual Foreign Arrangement Profiles that must indicate, among other things, any human rights concerns that might affect the dissemination of information to a partner agency.

3.1.2 Third-Party Rule

The third-party rule is a key aspect of intelligence sharing between any two parties.¹⁵

¹⁵ The consequences of breaching the third-party rule can be severe and can adversely affect the willingness of an agency to share intelligence in the future. As a middle power with a comparatively limited capacity to collect intelligence, it is important for Canada to be seen to be respectful of the third-party rule lest its access to the intelligence of its allies be restricted. As a net exporter of intelligence, the same calculus does not necessarily apply

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4 SERVICE RESPONSE TO THE CHALLENGES OF WORKING WITH

In response to these challenges, CSIS has taken action on a number of fronts. SIRC was told that these initiatives were part of CSIS's information-sharing strategy which, were sufficiently broad to capture all the relevant issues, as well as the full spectrum of foreign partners with human rights concerns,

The following section therefore examines CSIS's response in three specific areas. First, SIRC explored CSIS's need to seek "assurances" that is, official and lasting confirmation that does not, as a matter of course or practice, engage in any practice of torture, or support those activities being carried out by others. Second, SIRC looked at CSIS's directives on information-sharing that define and operationalize the Ministerial direction that was provided on the same subject. Third, we examine the system of caveats, that are designed to accompany any exchange with a foreign agency where the use of information could have a negative consequence on the person(s) referenced therein. Finally, SIRC examined some of the tools CSIS is developing to enhance the consistency and quality of the information it shares with foreign partners.

4.1 Assurances

In light of the serious issues

CSIS and the

Government of Canada had to take action,

SIRC was told that, in 2008, a series of discussions at the highest levels took place

CSIS officials asserted that their concerns were not temporary, and constituted part of a new reality that required a stronger information-sharing framework.

officials and legal experts agreed to provide CSIS with a verbal iteration of four key principles, or assurances, which they had already provided to their own government, namely:

was agreed that ³⁰ would provide verbally these assurances if and when they were ever requested by CSIS. Henceforth, it

By according to a senior CSIS official involved in these negotiations, CSIS was on its way to normal relations and exchanges with There was, however, one last step to complete, involving "putting into place a practical disclosure regime that ensures the assurances will be applied and are documented ... In keeping with the deal we now must transform our request for assurances into a [finalized] statement..."³¹

Reference to the notion of assurances was incorporated into high-level CSIS direction: for example, the 2011 DDO Directive on Information Sharing mentions the seeking of assurances as a possible and desirable risk mitigation tool when sharing information with an agency suspected of human rights violations, when the transfer of information could result in a negative action against the individual on whom the information pertains, or when the subject of the information is in detention abroad. In addition, CSIS's notes that confirmed with the Service that it would provide oral assurances, when requested, regarding respect for human rights.³² However, SIRC did not find more specific guidelines, whether in a directive, policy or other document, outlining the circumstances or conditions that would trigger the seeking

³⁰ Agreed on 2008 11 20. For references to this text, see File # 550-79-4-11, and ADO to various recipients, 2008-12-12

to various recipients, 2009-07-15
Subject: Co-op

³¹ Email from to and :

2009 03 04

³² CSIS Act s.17(1)(b) Arrangement

of these assurances, or the process to be followed in these exceptional cases. Indeed, SIRC was told that there was no policy on the issue of assurances.³³

As a result, there remains a lack of clear understanding as to what 'assurances' actually are, when they are to be used, and how they should be recorded on file. Indeed SIRC was given the impression during a briefing that it was unclear whether there was a need for CSIS to re-affirm assurances on a case-by-case basis after such assurances had been initially obtained from a foreign agency, and how this process should be recorded in documentation to ensure proper accountability.³⁴

Given the lack of clarity and absence of guidelines on the issue of 'assurances' from foreign partners when information-sharing presents a substantial risk of torture, SIRC recommends that CSIS develop direction and then policy on the practical application of assurances, such as when and how they should be sought, under whose authority, and how this process should be documented in operational reporting.

4.2 Ministerial Direction and CSIS Directives

As discussions on assurances unfolded, CSIS put in place two high-level Directives over a three-year period to establish clearer parameters and general procedures surrounding information-sharing with foreign agencies with poor human rights records. The first of these was the DDO Directive on Information Sharing with Agencies with Poor Human Rights Records of November 2008, the objective of which was to ensure that decisions surrounding the exchange or use of specific pieces of information were made at a level commensurate with the risk that the exchange may result, directly or indirectly, in the mistreatment of an individual. In particular, when there was a credible possibility that sharing or seeking information could result in, or contribute to the mistreatment of an individual, there was to be consultation with the

If the _____ concluded there was a substantial risk of mistreatment which could not be eliminated or mitigated, but that the information exchange should be considered, the decision was to be referred to the Assistant Director Operations (ADO).³⁵

Given the sensitivity of the issue, CSIS sought direction from the Minister. To that end, in May 2009, a Ministerial Direction on Information Sharing with Foreign Agencies was issued, stipulating that information-sharing with foreign partners was a key component of safeguarding Canada's national security and an "obligation" of all states involved in

³³ SIRC Briefing with _____ March 1, 2012

³⁴ SIRC Briefing with _____ March 27, 2012

³⁵ DDO Directive on Information Sharing with Agencies with Poor Human Rights Records, 2008 11 19.

the struggle against terrorism. The Direction authorized CSIS to enter arrangements with foreign agencies “generally recognized as having poor human rights records,” but also directed CSIS not to knowingly rely on information derived from torture and to take all reasonable measures to reduce the possibility that any action of the Service might, in practice or appearance, “promote or condone”³⁶ the use of torture.

In December 2010, the Service received a letter from the Minister of Public Safety that provided additional guidance on the question of CSIS’s international information-sharing practices. In contrast to the May 2009 Direction, however, the letter admits the possibility of “exceptional circumstances”, when a threat to human life or public safety may require CSIS to share information that may have been derived from the use of torture or mistreatment. “Therefore”, the letter stipulates, “in situations where a serious risk to public safety exists, and where lives may be at stake, I expect and thus *direct* CSIS to make the protection of life and property its overriding priority, and share the necessary information.. [emphasis added].”³⁷

A new Ministerial Direction on Information Sharing with Foreign Entities was approved in July 2011, replacing both the 2009 Direction and the letter. The new Direction, while condemning the use of torture in responding to terrorism, establishes considerations and a process for determining when it may be permissible to exchange information despite a substantial risk of mistreatment that cannot be mitigated. In those cases, the matter will be referred to the Director, who will consider a number of issues, including: the nature and imminence of the threat; the importance of sharing the information in regards to national security or other interests; the status of the relationship with the foreign entity receiving the information and their human rights record; the rationale for believing there is a substantial risk of mistreatment; the proposed measures to mitigate the risk, and the likelihood of success; and finally, the views of DFAIT or other relevant federal departments/agencies. The Director may also subsequently refer the decision to the Minister of Public Safety.

In August 2011, the DDO issued a new Directive that further articulated the Service’s framework around information-sharing, and replaced the 2008 Directive. The new 2011 Directive confirms the Government of Canada’s opposition to mistreatment and provides more direction to employees on what is meant by “mistreatment” and such important terms as “substantial risk”. While the Directive maintains the key role of the in reviewing potentially problematic cases³⁸, it also created the Information

³⁶ Ministerial Direction to the Director Canadian Security Intelligence Service: Information Sharing with Foreign Agencies, May 2009

³⁷ Letter, Minister of Public Safety to the Director of the Canadian Security Intelligence Service (December 7, 2010).

³⁸ Specifically, the must review any case that meets one or more of the following conditions: the information pertains to an individual in detention abroad; the information could result in a negative action

Sharing Evaluation Committee, a senior executive level committee that meets as needed at the request of the _____ to make decisions on whether to proceed with sharing information in cases where the possibility of a substantial risk of mistreatment that cannot be mitigated through caveats and/or assurances is present.³⁹

Public discussion on the government's direction to CSIS on this issue has been substantial in the wake these documents' recent release through access to information requests. Attention has been drawn to, among other things, the Minister of Public Safety's apparent reversal of his May 2009 position on torture. By including the possibility of exceptional circumstances in the 2011 Direction, the Minister's position was brought more into line with the DDO Directive of 2008, which had articulated a process for decision-making in cases where information should be exchanged despite a substantial risk of mistreatment. At the same time, however, the Minister's position of 2011 appears to be at odds with

More importantly, legal experts have raised the question of whether the Direction is consistent with Canada's domestic and international legal obligations with respect to torture.

Notwithstanding these possible legal challenges to the current Ministerial Direction, SIRC examined CSIS's adherence to the processes which the government laid down. This means, unequivocally, that exchanges with countries or agencies with human rights concerns – including _____ – require greater scrutiny. In terms of information-sharing with _____ SIRC was advised that the same procedures would apply, but in practice, it is only in exceptional circumstances, that information shared with _____ warrant the scrutiny of the _____ and in even fewer cases, the Information Sharing Evaluation Committee or the Director.⁴¹

against an individual; and/or any other information indicating that a potential mistreatment could result from information-sharing.

³⁹ Subsequent to the August 2011 Directive, _____ provided a number of presentations to employees in HQ to further explain this Directive. Attendance was mandatory for HQ Operational Branch employees from the DDG level down. Additionally, there are sessions on issues related to information-sharing in the _____

⁴¹ SIRC Briefing with _____, March 1, 2012.

4.3 Caveats

In the wake of _____ it became both common sense and common practice to ensure that caveats were attached to any information shared with a foreign agency, regardless of how robust, routine, or friendly those exchanges were. Two years after _____ and in response to specific recommendations regarding Canadian agencies' information-sharing practices with foreign entities, CSIS reported publicly that it had begun (as of 2003) to attach a new caveat to all information shared with a foreign agency that may have detained or could detain a Canadian on security grounds. In addition,

SIRC's review of exchanges with _____ suggested that, although the use of such caveats did indeed stretch back to 2003, their application was inconsistent: up to a dozen different caveats have been used in recent years. Of note, some of these caveats are appropriate responses to _____ such as one that states "should you deem [as a result of receiving this information] some form of legal action against [the target] is warranted, our Service trusts that [the target] will be fairly treated within the accepted norms of international conventions, that he is accorded due process under law and afforded access to Canadian diplomatic personnel if requested."⁴³ SIRC believes that one of the reasons caveats have not been applied in a uniform manner is because CSIS's policy on the use of caveats dates back to 2005, and has not been updated since so as to reflect new practices on information-sharing with foreign partners.⁴⁴

Thus, CSIS has yet to overhaul its policy framework on caveats; representatives from the _____ acknowledged that the completion of a new policy on caveats has been repeatedly pushed back since at least 2008. Therefore, as it stands, individual reports sent to foreign allies may contain between three and six different caveats; furthermore, any caveats pertaining to the potential treatment of the subject of the _____

⁴⁴ i.e. the assertion that the information being provided is CSIS property, and cannot be forwarded to another agency or altered without CSIS's direct consent

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information being sent that make reference to Canadian or international standards for human rights and treatment, or that address potential action (e.g. detention) against the subject, are without any guidance in policy.

SIRC believes that a revised policy on caveats is overdue and, as such, recommends that this policy be updated to reflect current information-sharing practices and processes with foreign partners, and should be finalized without further delay.

4.4 New Products and Tools

In addition to the information-sharing framework discussed above, SIRC was told that CSIS is also putting in place products and reporting tools to enhance the quality of its information exchanges with foreign partners.

To that end, CSIS has developed the _____ as a template to standardize the format for passing intelligence to partner agencies. The _____ was instituted in 2010 for a number of reasons, one of which is to minimize the chances that a foreign partner could misinterpret Service information by providing for enhanced "contextualization" of the information being shared. CSIS has also developed a new "shared lexicon" with the goal of instituting a consistent use of descriptors to characterize an individual's threat profile. Although not yet finalized on a technical level, the shared lexicon is expected to be included in the _____ in a "pull-down menu" format that will prompt the writer to choose from amongst a preset selection of descriptors.⁴⁵ The Service's definitions of each descriptor are to be included in a legend in the document that will be available to the foreign partner. This, the Service anticipates, will help to enforce a more precise terminology that will also lessen the chances of CSIS information or assessments being misinterpreted by foreign partners.

Both of these initiatives are consistent with

SIRC

therefore encourages the Service to finalize these initiatives as soon as practicable.

⁴⁵ Examples could include such terms as "extremist" and "fundamentalist". The final version of the _____ is expected to also include the list of approved caveats in another automated "pull-down menu".

5 ADDITIONAL ISSUES FOR CONSIDERATION

5.1 Minors and Young Offenders

In the course of the review, SIRC paid special attention to CSIS's practices surrounding information-sharing with _____ on youth, given ongoing interest in this sensitive issue.⁴⁷ SIRC was told that decisions about sharing information on minors and young offenders are made on a case-by-case basis.⁴⁸ What SIRC observed, however, suggests a degree of uncertainty with respect to sharing information on individuals who fall into these categories.

⁴⁷ See, for example, SIRC Annual Report 2008-2009, "Accountability in a new era of security intelligence", p. 11.

⁴⁸ SIRC Briefing with _____ March 1, 2012.

In light of what appears to be a lack of clarity surrounding what information can or should be shared on young offenders, SIRC encourages CSIS to consider soliciting a legal opinion on the issue, if one has not already been sought, to assist it in developing specific parameters around sharing such information with foreign partners.

SIRC's finding builds on observations made in previous reviews. Most recently, in a study on Domestic Radicalization, SIRC noted that "there is no clear approval process set out in operational policy when sharing information on minors, particularly with foreign partners. Rather, decisions are made on a case-by-case basis [...]. Therefore, SIRC recommends that CSIS develop a new policy to govern the sharing of information on minors with foreign partners, or amend existing policy on information-sharing, to reflect due sensitivity to youth."⁵⁴ SIRC also would encourage the Service to consider developing "considerations" around the sharing of information on minors with foreign partners, separate and apart from young offenders, to provide guidance on this important issue. On that, SIRC points to the "Guidelines" included in the Information Sharing Evaluation Committee as an example of a thoughtful discussion of questions and aspects to consider when determining whether to share information. In particular, the Guidelines includes such things as multiple references to relevant court decisions, interpretations of international conventions, and examples of authoritative sources to consult.

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⁵³ CSIS response to SIRC written questions (February 28, 2012)

⁵⁴ SIRC Study 2011-05, "Domestic Radicalization"

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5.3 Closing the File

The main thrust of this review has been devoted to a discussion of information-sharing in the context of active, ongoing investigations. A related issue for SIRC concerns CSIS's practices when an investigation has been concluded or a targeting authority terminated. In other words, what steps does the Service take to ensure that foreign partners that have been the recipients of adverse information on individuals are kept apprised of changes in CSIS's assessment of the threat profile of those individuals?

In the course of review, SIRC saw multiple examples of CSIS advising its foreign partners, of the termination of an investigation. In one such message, CSIS noted having advised of the termination of the Service investigation of [xxxx].

SIRC inquired as to whether this represents the standard practice with respect to terminating an investigation and was told that this process is not prescribed in any policy; rather it is part of "case management."⁵⁹ SIRC found this to be a good practice as it seems to represent a good faith effort to share not only adverse information, but information that suggests the absence of a continued threat as well. Accordingly, SIRC would encourage CSIS to take whatever steps it deems appropriate to prompt its officials to follow this process.

⁵⁹ SIRC Briefing with

March 1, 2012.

6 CONCLUSION

Sharing intelligence between and among states is a clear requirement of effective national security, especially in an era of global terrorism and terrorist networks that spread across states. The most recent CSIS Annual Report states that "it is rare to find any threat to Canada's security that does not have some international nexus which requires investigation, and therefore CSIS is increasing its international security intelligence operations and working closely with foreign partners."⁶⁰

Although a feature of contemporary intelligence work, enhanced information-sharing presents a number of challenges, not the least of which is the need for agencies like CSIS to reconcile democratic values with the imperatives of global intelligence collection. CSIS has acted to develop the elements of an information-sharing framework focussed on foreign partners with human rights concerns; SIRC encourages the Service to finalize these elements as soon as possible.

It should also be kept in mind that risk mitigation techniques, like caveats and assurances, have their limitations, especially when dealing with a partner like This is something CSIS freely acknowledges. It is also a point raised by Justice Iacobucci, who noted in his report that the inclusion of caveats should not be considered "a panacea; their inclusion does not guarantee that information will not be shared in breach of those caveats."⁶¹ With this in mind, SIRC encourages CSIS to continue to be cautious when sharing information with and will continue to pay close attention to its information-sharing policies and practices for the foreseeable future.

⁶⁰ Canadian Security Intelligence Service, "Public Report 2009/2010", p. 4.

⁶¹ The Honourable Frank Iacobucci, Q.C. Commissioner, "Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin", 2008, p. 401.