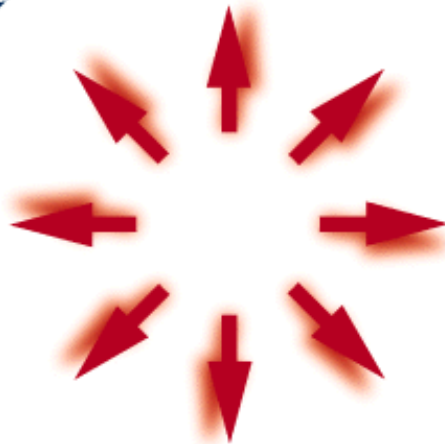


REVIEW AND OVERSIGHT
IN THE NEW MILLENNIUM:



CHALLENGES OF A MULTIPOLAR WORLD

PROCEEDINGS OF THE
INTELLIGENCE REVIEW AGENCIES CONFERENCE

JUNE 27-29, 1999
OTTAWA, CANADA

SECURITY INTELLIGENCE
REVIEW COMMITTEE



COMITÉ DE SURVEILLANCE DES
ACTIVITÉS DE RENSEIGNEMENT
DE SÉCURITÉ

**Proceedings
of the
Intelligence Review
Agencies Conference**

**Ottawa, Canada
27-29 June 1999**

List of Delegates

Australia

Mr. William Blick
Inspector-General
Intelligence and Security

Belgium

Mr. Jean-Louis Prignon
Member
Comité permanent de contrôle
des services de renseignements

Mrs. Danielle Cailloux
Member/Counsel
Comité permanent de contrôle
des services de renseignements

Canada

Hon. Paule Gauthier
Chair
Security Intelligence Review Committee

Hon. Bob Rae
Committee Member
Security Intelligence Review Committee

Hon. James Grant
Committee Member
Security Intelligence Review Committee

Hon. Raymond Speaker
Committee Member
Security Intelligence Review Committee

Hon. Ron Atkey
Former Chair
Security Intelligence Review Committee

Hon. Jean Jacques Blais
Former Committee Member
Security Intelligence Review Committee

Hon. Saul Cherniack
Former Committee Member
Security Intelligence Review Committee

Hon. Edwin Goodman
Former Committee Member
Security Intelligence Review Committee

Hon. Rosemary Brown
Former Committee Member
Security Intelligence Review Committee

Hon. Justice Michel Robert
Former Committee Member
Security Intelligence Review Committee

Hon. Stewart McInnes
Former Committee Member
Security Intelligence Review Committee

Mr. Maurice Archdeacon
Executive Director
Security Intelligence Review Committee

Mr. Vic Gooch
Assistant Inspector General/Director of Operations
Inspector General of CSIS

Mr. David Peel
Former Inspector General of CSIS

Hon. Claude Bisson
Commissioner
Communications Security Establishment

Ms. Joanne Weeks
Commission Secretary
Communications Security Establishment

New Zealand

Hon. Justice Laurie Greig
Inspector General
Intelligence and Security

United Kingdom

Mr. Kevin Barron, M.P.
Member
Intelligence and Security Committee

Mr. Michael Mates, M.P.
Member
Intelligence and Security Committee

Mr. Alistair Corbett
Clerk to the Committee
Intelligence and Security Committee

Mr. John Morrison
Investigator
Intelligence and Security Committee

United States

Mr. Ethan Bauman
Inspector General
National Security Agency

Mr. Britt Snider
Inspector General
Central Intelligence Agency

Mr. Warren A. Uthe
Inspector General
Defence Intelligence Agency

Mr. George B. Lotz, II
Assistant to the Secretary of Defense
(Intelligence Oversight)

Mr. Paul Holtz
Assistant for Inspections
(Intelligence Oversight)

Ms. Susan H. Duclos
Associate Inspector General
National Reconnaissance Office

Mr. David M. Crane
Director for the Office of Intelligence Review
Office of the Inspector General
Department of Defense

South Africa

Mr. Joe Nhlanhla
Minister of Intelligence Services

Ms. Sibongile Mpye
Office of the Minister of Intelligence Services

Mr. Dennis Nkosi
Chief Director
Office of the Minister of Intelligence Services

Mr. Linda Mti
Coordinator for Intelligence
National Intelligence Coordinating Committee

Ms. Nosiviwe Mapisa-Nqakula
Chairperson
Joint Standing Committee on Intelligence

Mr. Luwellyn Landers
Member
Joint Standing Committee on Intelligence

Mr. Thabang Makwetla
Member
Joint Standing Committee on Intelligence

Ms. Nonzame Mnyaka
Committee Secretary/Coordinator
Joint Standing Committee on Intelligence

Conference Background

The first Conference of Intelligence Review Agencies was held on 17 and 18 November 1997, in Canberra, Australia at the invitation of Australia's former Inspector-General of Intelligence and Security, Mr. Ron McLeod. This first conference highlighted the 10th year anniversary of Australia's Office of the Inspector-General of Intelligence and Security.

The Canberra Conference gathered delegates from Australia, Canada, Great Britain, New Zealand, South Africa and the United States.

At the end of the Canberra Conference, the Honourable Paule Gauthier, Chair, Security Intelligence Review Committee (SIRC), extended an invitation to the delegates to attend a similar conference in Ottawa, Canada, during June 1999.

Opening Remarks

On the morning of 28 June 1999, 39 delegates gathered at Wilson House, Meech Lake, Canada for the first of two days of the second Conference of Intelligence Review Agencies. The countries represented at the Ottawa Conference were: Australia, Belgium, Canada, Great Britain, New Zealand, South Africa, and the United States.

Paule Gauthier, Chair, Security Intelligence Review Committee, Canada: Madame Gauthier welcomed the delegates to Ottawa. A special welcome was extended to the delegation from Belgium who attended the Intelligence Review Agencies Conference for the first time.

Madame Gauthier stated that the Canberra Conference had been both stimulating, efficiently run, and that it was important to renew the experience. She also noted that the Ottawa Conference coincided with the fifteenth anniversary of the establishment of SIRC as Canada's independent external agency responsible for reviewing the activities of the Canadian Security Intelligence Service (CSIS or the "Service").

Madame Gauthier stated that there had been changes on both the domestic and international fronts since the Canberra Conference: she noted that elections had been held in some of the delegates' countries, and that changes had occurred in international terrorist trends. She cited the bombings against the United States embassies in Nairobi and Dar es Salaam, the repercussions of which, she noted, affected all countries. In contrast to the Cold War period, Madame Gauthier noted that the threats to the security of states today were more numerous and more difficult to identify, and the new millennium could bring an era of even greater uncertainty.

Madame Gauthier remarked on the changing role of Western security and intelligence agencies since the Cold War, and the subsequent reduction of resources dedicated to counter-intelligence issues with a corresponding increase in attention to public safety, counter terrorism, and transnational criminal activities.

On the role of review agencies, Madame Gauthier remarked that their role had become more critical with the increased intrusion of the state in everyday life. She emphasized that one of the main challenges facing the review agencies was the need to maintain a relationship with the bodies being reviewed and yet retain arms length objectivity.

Madame Gauthier expressed her hope that the conference in Ottawa would enable the delegates from the various review agencies to share their experiences in meeting the different challenges, and to discuss more effective ways of functioning in the new millennium.

Madame Gauthier outlined the key issues that would be addressed by the conference:

- < delegate reports on current problems and conditions in their jurisdictions;
- < transparency vs national security: (a) relationships with politicians;
- < transparency vs national security: (b) relationships with the media;
- < delegate reports on resources to conduct reviews: enough power, enough people; and

< has the review process changed the culture of the security agencies?

Madame Gauthier invited Mr. Jacques Saada, M.P. to formally open the conference.

Jacques Saada, M.P., Parliamentary Secretary to the Solicitor General of Canada, and Member of the Parliamentary Standing Committee on Justice and Human Rights

Mr. Saada remarked that, as a Parliamentarian, the theme dealing with the review agencies' relationships with politicians had struck a chord. He said that although he recognized the need for secrecy in the area of security intelligence, he also wished he could provide more information to Canadians about the efforts and successes of the security intelligence community. He stated that in the absence of facts, the imagination can be very fertile, and that is why it was important for politicians to be transparent.

Mr. Saada explained that transparency was achieved in Canada by the Solicitor General's annual statement on national security and the presentation of CSIS' public annual report. He also emphasized SIRC's role in informing Parliamentarians and Canadians in general. Mr. Saada added that, in his view, it was fair to say that Canada had one of the most progressive and balanced accountability regimes in the world, noting the roles of the Inspector General of CSIS, and, on occasion, the Auditor General of Canada, who audited the security intelligence apparatus.

Mr. Saada noted, however, that although the review agencies in Canada are essential in maintaining public confidence, they have no power to impose corrective measures and thus are not accountable. He said this is why, in Canada, a number of Parliamentarians believe that there should also be an “oversight” role (as distinguished from “review”) for Parliament.

Mr. Saada concluded, however, that Canada, democracy, and the rule of law, have been well served by the existing review agencies in place, and their roles will become even more essential in the future.

Working Session #1: Delegate Reports on Current Problems & Conditions in Their Jurisdictions

Madame Gauthier stated that, in the beginning, SIRC had a more “macro” approach to reviewing the Canadian Security Intelligence Service, and vigorously and publically objected to major systemic problems. However, due to the development by CSIS of systems and policies in line with past SIRC recommendations and concerns, the approach in recent years has been more “micro”, and thus generally less newsworthy.

Madame Gauthier emphasized that SIRC's main challenge was its relationship with Parliament and, in particular, what information can or cannot be released to Parliamentarians. Other challenges include finding better ways of reaching Canadians, being better known by Canada's legal community, and being better understood by the Service, especially at staff levels below senior management.

Madame Gauthier added that advances in technology, and the emergence of new types of threats, such as economic espionage and transnational criminal activity, are also challenges for SIRC.

Belgium

The delegates from Belgium stated that members of the Comité R are satisfied with that agency’s statutory mandate and the independence it enjoys in both its review and accountability functions. It was explained that the majority of members of the Comité R are members of the judiciary, and all have an average of 20 years experience, mainly in the criminal field.

The delegation observed that one of the main challenges is recruiting personnel who are knowledgeable about security intelligence issues. This is why the committee’s investigators are recruited directly from the security intelligence agencies themselves. The committee has recently been assigned additional responsibilities and, therefore, hopes to be able to hire additional staff.

Another major challenge for the committee is the strong culture of "secrecy" that is prevalent within Belgian state security services. Although the need for secrecy is recognized, there must be a balance between secrecy and democratic transparency.

United States

A number of issues were raised by the delegates from the United States. In contrast to SIRC, the challenge for one Inspector General (IG) was to move from a "micro" to a more "macro" approach. To date, the IG's main focus has been to monitor individual programs and misconduct, but he has not had a fundamental impact on how the intelligence agency operates in the long term.

Another challenge discussed by several delegates was finding the balance between helping the intelligence agency to operate more effectively and more lawfully, without being perceived as being overly critical and adversarial toward the agency. One of the challenges encountered by the delegates was how can a reviewer say something about the agency's policy process, yet remain apart from policy decision making. The difficulty is that in order to stay attuned to issues that may arise in the intelligence agency, the IG has to be involved in its daily activities, and this sometimes creates the problem of independence.

One theme involved producing reports on a timely basis. The delegates sought ways of delivering valuable information in a timely way to permit action to be taken. One IG's involvement in the review of the US bombing of China's Embassy in Belgrade is a case in point; he noted that his review agency was able to produce its report in just three weeks.

As the techniques used to collect signals intelligence are changing rapidly, the IGs try to find ways of protecting the rights of citizens in light of this and other advances in technology. One area where this applies is in the promulgation of policy to address "information operations", or "information warfare". A related challenge is the acquisition of the expertise or the resources necessary to have an impact on the areas affected by changes in technology.

Several delegates reported that they lacked sufficient resources. This caused problems in being able to cover all areas of intelligence agency activities, the distance involved, and, in particular, professional training for investigators. Reviewing the acquisition and contracting processes were also emerging issues for one office.

Training emerged as a particularly important issue: to ensure that all individuals involved in intelligence activities, especially the younger generation, have proper training, and understand the rules and procedures. One Inspector General has established a web site which outlines the rules and regulations for all personnel involved in intelligence. The web site is also accessible by the public, and thus provides transparency on the limits imposed on the activities of intelligence personnel.

One difficulty stems from the general oversight system in the United States. The delegates were told that problems can arise when certain issues involve more than one agency: if one IG wishes to conduct a particular project that should involve another IG who does not want to participate, no one performs the oversight function.

For a recently established review body in the USA, the significant challenge was to develop policy and procedures. The delegate said the intelligence agency has undergone very little oversight and, except for the Director, management was still reluctant and resistant to the idea.

A challenge posed to one of the American delegates involved the coordination and the restructuring underway in a large government department which was still organized to fight the threats stemming from the Cold War. He too pointed to the challenge from information management: collecting and disseminating information in a timely and secure manner.

Commonwealth

One delegate reminded the conference that his office is a “one-man band”. Although he has not had very many complaints, he does on occasion receive Government requests to deal with other matters. His office now has the responsibility to review adverse comments from the intelligence services about refugee applicants. The creation of a new IG who will be responsible for authorizing domestic intercept warrants will also impact on his functions.

Due to the degree of cooperation his office receives from the agencies with which it deals, another participant explained that his office did not have any serious challenges. He remarked, however, that a major ongoing issue is technology and the legal issues it raises in a federation where there are many different jurisdictions. As with the American counterparts, he noted the ongoing problem associated with being able to independently review the organizations, while at the same time maintaining a close relationship with them.

One of the main obstacles for a Parliamentary review committee was its inability to investigate operational matters. The Committee has been accused of not having the independence it should have, because its members are appointed by the Executive, and not by Parliament.

One delegate commented that in order to establish proper oversight mechanisms, South Africa has had to adapt the experiences of similar agencies in other parts of the world. Until recently, there were many separate intelligence services which made supervision very difficult. Therefore, one of the main challenges for his office was the coordination, amalgamation, and integration of the security services.

Another delegate remarked that the fact that a new IG had not been appointed for over a year indicates that review and oversight in Canada's intelligence community may not be quite as healthy as it should be, as it affects the Minister's knowledge of the system, and limits his capacity to account for the Service's activities and to initiate corrective measures at an early stage.

Working Session #2: Transparency vs National Security: (A) Relationships with Politicians

Madame Gauthier opened the session by commenting that SIRC's objective is to be the public's independent source of information on CSIS. However, this creates a problem because SIRC is also compelled, by law, to treat the classified information it has access to in confidence. Madame Gauthier remarked that because of this, the relations between SIRC and Parliament have been acrimonious at times.

Madame Gauthier observed that the proposal made by the Special Senate Committee on Security and Intelligence to establish a permanent Parliamentary committee to review Canada's intelligence community would be a significant step in trying to address this dilemma.

Madame Gauthier invited Mr. John Maloney, M.P. and Senator William Kelly to address the delegates.

John Maloney, M.P., Chairperson, Standing Committee on Justice and Human Rights, Canada: Mr. Maloney stated that a certain amount of political control is needed to place a check on the activities of secret services to ensure that their mandates are being fulfilled, and that the priorities of the Government are being met. He stated however that, in Canada, Parliamentary control in relation to CSIS and SIRC is impaired by the fact that "national security" concerns have priority over "public scrutiny".

Mr. Maloney acknowledged, however, that it would be difficult to ensure secrecy and security in a politically partisan system, and that SIRC is perhaps the best alternative to direct Parliamentary scrutiny and control.

Senator William M. Kelly, Chairperson, Special Senate Committee on Security and Intelligence, Canada: In Senator Kelly's opinion, there has been a great improvement in the willingness to move toward more transparency in Canada. On the other hand in his view, Parliament does not need to know everything, but it does need to know that Ministerial accountability can be depended on. There is also the problem of having Parliamentarians security-cleared for the purpose of the review.

According to Senator Kelly, a permanent Senate Committee, rather than a House of Commons Committee, would assure continuity and provide a solution to the partisanship dilemma.

A delegate stated that the experience in the United Kingdom has proven that Parliamentarians can be trusted to do a serious job in terms of oversight. He reminded the delegates that his Committee is entirely composed of Parliamentarians, and that partisanship is not a problem because members are appointed by the Executive, and not by Parliament. The members also have

undergone security clearances, and there have never been information leaks.

United States delegates explained that transparency in the American system has made a difference in terms of Congressional support for intelligence as regards funding and political support. Although they worry about leaks, it has not been a major problem even though the amount of intelligence product that is sent to the various committees of Congress is “incredible”, and all but a very few hearings are in-camera.

A delegate inquired about the role of the Intelligence Oversight Board in the U.S. He was told that the Intelligence Oversight Board is mainly an advisory body to the President, but it has investigative powers and can request specific information from the agencies.

In the discussion about the British system, a delegate asked what body reviews the operational activities of the security services, and who deals with complaints from the public.

The conference was told that the United Kingdom’s Committee had just hired an investigator to review the operational activities of the Services and that a Tribunal receives complaints from the public.

When asked whether the British delegates had encountered any problems in sharing information with their Parliamentary colleagues, the answer was straightforward: they don’t divulge any information, except through the medium of their reports.

Derek Lee, M.P., Member, Standing Committee on Justice and Human Rights, Canada: Mr. Lee commented that the experiences of the UK and the US with regards to elected persons having access to classified information is evidence that Parliamentarians in Canada should also be trusted with that type of information.

A delegate wondered what would be different from the present situation if Members of Parliament could not say anything to their colleagues. A British delegate said that the important factor in a Parliamentary committee is that the members would come from all political parties.

Mr. Saada said that in his view, some answers ought to be given to Parliamentary

committees. He added that if they are not, it is not because the system prevents witnesses from answering, but because the law isn't being applied properly.

During the discussion, one delegate opined that Canada's laws are very clear in that national security information is confidential and forbidden by law to be disclosed.

A delegate stated that his concern was not *whether* Parliamentarians ought to be conducting the work of oversight, but rather, if they do so, how broad should their role be? He added that the advantage of a committee such as SIRC is that by statute, it has full access and is non-partisan. He said that from what he understands, the Parliamentary Committee in the UK is limited in its oversight mandate as regards the total operations of the security services. He also questioned whether the US Oversight Committee could conduct investigations for its own purposes.

A United Kingdom delegate said that under its Act, if the Committee wants to look at something operational and it is denied this information, it can appeal to the Minister. He said that his Committee is going through a change in what it will oversee, however. The employment of an investigator will allow the committee to examine certain areas that, in theory, the Act says the Committee cannot.

The issue in the UK at the time was whether it wants a committee of Parliamentarians or a committee of Parliament. In his view, however, the issue that should be debated is whether national security is above party politics.

The conference was told that whereas members of Belgium's Comité R are not Parliamentarians, they are appointed by Parliament. While certain information is not disclosed to Parliament, at its request, Parliamentarians still have confidence in the Committee's work. In the delegate's opinion, the risk of leaks to the press would be too great if too many Parliamentarians were to assume the oversight role.

A South African delegate stated that valuable advice was given to him by an official of the Senate Intelligence Oversight Facilities Committee in the USA: in order to achieve a balance you not only need to gain the confidence of the public, but you need the confidence of the security agencies. The agencies will then be eager to provide you with the information you need and require.

He stated that all members of his committee have undergone security clearances, but it was more to satisfy the President than public opinion. There is also a system in place whereby if the Committee wishes to make some information public, the security agencies can object.

Madame Gauthier invited Mr. Claude Bisson, Commissioner for the Communications Security Establishment (CSE), to outline the trends and pressures in Canada that led to the establishment of his office, the methods that he employed to fulfill his mandate, the lessons learned, and his views on the future of the review function in democratic societies.

Claude Bisson, Commissioner, Communications Security Establishment (CSE), Canada: Mr. Bisson reminded the delegates that the CSE has no legislative mandate, and he was appointed by the Government under the *Inquiries Act*. The Commissioner's mandate is also limited to verifying CSE's compliance with the laws, and does not include investigating fraud or waste. In 1999, the Commissioner's complaints functions were expanded to include the ability to report to individual complainants about his findings.

Mr. Bisson remarked that Western Governments have been increasing their efforts to monitor and report on intelligence agencies' compliance with the laws. A key issue in Canada is whether the Government should introduce legislation for the CSE, with its own permanent review mechanism.

Another trend noted by Mr. Bisson is the continuing pressure for intelligence agencies to be more open, regardless of the new accountability measures that have been put into place over the past couple of decades. In Mr. Bisson's view, this trend will not only encourage review agencies to be more open themselves, but they will also increasingly be asked by Governments to assist them in determining how much further they can and should go in exposing the intelligence agencies to public scrutiny.

Mr. Bisson concluded by stating that the small community of intelligence review agencies was an immense help to him and his office.

A delegate asked whether the Commissioner's two-member staff (with additional contract labor) was sufficient to fulfill his mandate, considering all the work that

needed to be done.

Mr. Bisson replied that he had sufficient staff. He explained that his office has unlimited access to CSE information, and they focus on issues that they believe are fundamental.

Another delegate wondered whether the Commissioner's office would be more aggressive if it had a legislative mandate to establish his position, and thus put the CSE under a legislative framework.

Mr. Bisson replied that in his view, an important agency like the CSE must have a legislative basis to provide a yardstick by which to measure the legality of the agency's activities. He cited CSIS as an example of how an agency operates under specific legal requirements.

A delegate asked whether the culture of the CSE had changed as a result of review and, more particularly, whether it was more open.

Mr. Bisson replied that this was indeed the case. As an example, he explained that the CSE gives advice to private industry on information technology.

Working Session #3: Transparency and National Security: (B) Relationships with the Media

Madame Gauthier stated that the media are like fellow auditors, and as such play a key role in the accountability process. Madame Gauthier added, however, that a dilemma lies in the review agencies' obligation to refrain from giving journalists the information they would like to have because of "national security" considerations, a term the public views with increasing scepticism.

Madame Gauthier invited two Canadian journalists who report on security and intelligence issues to discuss the problems they face in reporting on these matters, and in dealing with review bodies.

Normand Lester, Journalist, Télévision Radio-Canada, Canada: Mr. Lester stated that both journalists and the public have become skeptical of the "national

security" label, and view it as a means to mask incompetence, corruption, and sometimes even criminal acts.

In Mr. Lester's view, the media in Canada have often revealed stories that would never have come to the attention of the review bodies. Also, Mr. Lester stated that many people are compelled to denounce the activities of security services to the media because they want to preserve their anonymity, or they are dissatisfied with the result of decisions made by the review body, or simply because the best way to get the Government's attention has been through front-page news headlines.

Mr. Lester concluded that the media must maintain cordial relations with review agencies, but must also keep an eye on them to ensure they don't get too comfortable with the agencies they review.

Jim Bronskill, Journalist, Southam News, Canada: Mr. Bronskill observed that journalists face a significant challenge in reporting on intelligence issues because of the secrecy factor, and he wondered whether there was a better way to disseminate this information without compromising state secrets.

Mr. Bronskill explained that his experience in gathering information from Parliamentary committee hearings, reports and studies from the review agencies, and even interviews and briefings has been somewhat disappointing. In fact, Mr. Bronskill remarked that he learned more about the activities and interests of Canada's intelligence agencies from the agencies themselves than from the review bodies that oversee them.

The lively discussion that ensued elicited a wide range of opinions that focused not only on the willingness of review bodies to provide information, but also on the professionalism and maturity of the journalists who receive it.

An American delegate observed that there had been an enormous change in his country in recent years and he reiterated that a great deal of information had been given to the media by the intelligence agencies. He said that recently, the Central Intelligence Agency released over a million pages of formerly classified documents. He stated that as an IG, he has an obligation to inform the media as much as possible.

Another delegate from the United States commented that his agency has developed a relationship with some media personnel based on the latter's maturity, reliability, and ability to treat certain information with discretion. He emphasized that providing information to those who act responsibly is mutually beneficial because they will accurately report the information to the public.

One delegate stated that his office was established to reassure the Government and the public, but his involvement with the media has been minimal. He noted, however, that it was possible to give out accurate information through prior consultation with the security agencies, and background briefings with journalists.

A Commonwealth delegate explained that although her Committee has made efforts to inform the media, they tended to report their own perspectives and views on issues relating to the intelligence services. The fact that the Committee works behind closed doors is also a point of disagreement.

One delegate expressed what appeared to be a common view that the oversight and journalist communities must cooperate and understand the basis from which each other operates in order to achieve greater transparency and understanding on what should and should not be published.

The conference was informed that due to the practices of the British media, only the Chair of the United Kingdom Committee can speak to the media. The opinion was expressed that "chequebook" journalism is a major problem in developing a relationship with the media: without trust in both directions, a good relationship is impossible.

Mr. Lester said that in Canada, the policy in the media is that a journalist cannot pay for information.

One delegate wondered whether review agencies could quietly be of assistance to journalists by providing them with suggested lines of inquiries.

The question did not receive a positive reception. A colleague said that if the review agency knows of information that should be aired or further pursued, then that agency should pursue the matter, not use a third party to obtain and disseminate the information.

An American delegate said he would be very reluctant to tip off journalists to more productive lines of inquiry. In his view, this type of practice would ultimately undermine the foundation of trust that review agencies have that allows them to access information from the agencies they review.

A delegate asked how the journalists present would respond if an intelligence service employee provided a journalist with information about the activities of the agency, but the Director of that agency found out about the leak and requested that the journalist not release the information on the basis that it would be damaging to national security.

Mr. Bronskill responded that he would only disclose the information if it was in the "public interest" to do so. He also said, however, that there are ways of dealing with this type of situation in a responsible way, and the story could be told without breaching security.

Mr. Lester stated that he has, on several occasions, not published certain information he held on the grounds that it was not in the "public interest" to do so.

In the discussion that followed, a delegate questioned whether journalists really know what is in the public interest and what can be considered an issue of national security. Another raised the spectre of journalists creating a scandal on the basis of inaccurate information, and he opined this is why it is important for intelligence services to explain to journalists that their information is wrong.

A different approach was aired when a delegate broached the issue of the moral and ethical responsibilities of journalists in regard to sources within the intelligence services who regularly disclose national security information to them.

Mr. Bronskill responded that sometimes secrets are divulged for good reason: for example, when laws are being broken. In this case, journalists have to weigh the damage to democratic institutions by not divulging the information versus the damage done by divulging the secrets.

Mr. Lester said that before publishing a story, journalists verify whether the story is true and whether it is in the public interest to divulge it. Mr. Lester added that journalists protect their sources much like intelligence agencies protect theirs.

A delegate from Canada wondered what happened to the proposed legislation on the protection of “whistle blowers”, i.e., employees of intelligence organizations who want to reveal something of importance to review bodies. Another explained that there was a serious debate on the issue of whistle blowers in the United Kingdom at the present time.

Mr. Bronskill responded that security agencies aren't necessarily full of whistle blowers waiting to unload information. He said that he believes that when a whistle blower does go to the media, it is often for good reasons.

Mr. Lester pointed out that in Canada, there would be more people going to the review bodies with information if they could be guaranteed that their identity would remain secret.

The conference was told that in Belgium, people who work in the intelligence community are sworn to professional secrecy. If these people were to divulge classified information to the media, even if it is in the name of “public interest”, they would be held criminally liable. He added that there would have to be very strict conditions placed on what the media in his country could divulge to the public, especially since, in his view, most whistle blowers have personal reasons or vendettas for divulging the information to journalists.

A delegate from Canada observed that the existing legislation dealing with official secrets in Canada has not proven to be very successful in preventing classified information from being illegally disclosed to the public.

Madame Gauthier concluded by encouraging the journalists present to continue to be vigilant and persevere in their search for the truth because they are an important part of the accountability process.

Working Session #4: Delegate Reports on Resources to Conduct Reviews: Enough Powers, Enough People

Madame Gauthier commented that SIRC, like the agency it reviews (CSIS), had experienced cutbacks, although not to the point of staff reductions.

Madame Gauthier remarked that the question of resources is a matter of: (1) risk management, or what is the likelihood that because of inadequate resources, review bodies will overlook significant systemic failures; and (2) efficiency, or how can review agencies get more audit “bang” for their money.

Madame Gauthier said that the Director of CSIS had recently commented that his agency was subject to “onerous oversight” and, thus, she wondered whether it was possible for review agencies to have too many resources for the system’s good: can too many comprehensive reviews impair the ability of intelligence services to carry out their mandates?

Madame Gauthier invited the delegates to report on their resources and powers to conduct reviews.

A delegate from South Africa emphasized that resources are never enough! She said that one effective power the Committee has at its disposal is the ability to scrutinize the budgets of the security services. She also observed, however, that the role of the “investigator” within the Committee has been rendered practically obsolete because the politicians prefer to conduct their own investigations. Consequently, she was interested in learning about the role of investigators in other countries, and added that the review committees in South Africa are mostly ad hoc. In her view, South Africa should consider having its own permanent review committee.

A United Kingdom delegate stated that in terms of resources, time, and adequate skills (such as those possessed by the “insiders” in the intelligence business), his committee did not have enough to make detailed examinations, considering the number of agencies it has to review. As regards the experienced investigator recently added to the committee, while he will not necessarily have access to everything, he will be in a good position to know what to look for.

Two other bodies in Britain play a role in oversight: the Commissioner who reviews warrant applications, and the Tribunal, which deals with complaints from the public. A delegate said that both agencies were satisfied with their powers and resources.

Another delegate advised that although he was alone in his job, he was very satisfied with the resources and cooperation he receives from the security agencies he reviews. He emphasized that his main strength is being able to report publically when the services fail to provide him with the information he needs.

There was considerable diversity in the comments from the Inspectors General in the United States. The challenges for the first group with adequate resources differed from their peers. It is not so much a question of powers or resources, said one delegate, but rather finding the right people to do the work. He said that his office had put together not only auditors, but lawyers, intelligence specialists, management analysts, and acquisition experts, enabling his agency to examine any particular subject that Congress wanted it to look at. The delegate explained that collaboration between the agencies was more of a challenge and that multi-agency working groups such as the Inspector Generals Forum and the Joint Intelligence Oversight Coordinating Group have been effective in that sense.

With a staff of 160 people, one IG said he has enough resources and enough powers. In the last 10 years while the agency was growing smaller, the IG's office was actually growing larger. He too expressed the view that the main challenge was getting the right mix of skills. On the issue of working together, he said that the IG Forums in the USA were producing interesting results, as was the Integrity Committee of the President's Council on Integrity and Efficiency in Government. This is a Federal level body whereby IGs of all departments and agencies meet on a monthly basis. He said the Integrity Committee receives complaints from the public on the conduct of all IGs across the Government, and acts as a "watchdog on the watchdogs".

Other delegates asserted that their offices have enough powers to perform their review functions, but the resources to effectively employ those powers were lacking. One delegate said that because his office only had a staff of 10 people to perform oversight functions throughout the massive department, he has had to employ "risk management". He sets priorities by identifying those areas where the potential for violations is high. In one area, he agreed to reduce the number of inspections as long as the units there continued to run effective training and awareness programs.

A delegate said that because the organization his office oversees is very large, the resources to perform the review functions were strained. His office is undertaking its own internal audit to see whether, in terms of standards and methodologies it uses in making assessments of the agencies it reviews, his office would stand up to the same scrutiny; that is, whether the office was performing its functions in the most effective and efficient way. He was satisfied with the independence and the access his office enjoys, which he believes is very important.

A delegate explained that because her office is recent and growing, it still did not have enough skills, resources or powers to do the work. She said that the main challenge was finding the right expertise needed to review the organization: satellite operators, engineers, procurement, and acquisition specialists.

A Canadian delegate said that the resources he had to fulfill his mandate were adequate considering that his mandate is very focused and narrow. He is also satisfied with the powers he has to fulfill his mandate, especially since the office now has the ability to respond directly to individual complainants about its findings.

Another delegate commented that it is not so much an issue of the IG having enough powers to perform the functions, but how frequently these powers need to be asserted. In terms of personnel, he agreed that finding the necessary skills and talents is far more important than numbers.

The conference was informed that the composition of Belgium's Comité R will soon be reduced to one permanent member and two part-time members (from four permanent members) who will conduct all of the research, write all of the reports (including the annual report), and provide advice to Parliament on new legislation. The delegate was worried about how the Comité R will manage. On the other hand, the Comité R has a secretariat and its own investigations unit with powers to interview and subpoena witnesses, as well as search and seizure. Although resources are sufficient, it could use the addition of a researcher/librarian, but to date this has been refused repeatedly by Parliament.

A delegate remarked that the principal pressure in terms of resources for his office comes from being both a complaint-handling agency as well as an inspection agency. He observed that the number of complaints can be difficult to predict and they are highly resource-consuming. For that reason, he adopted an approach whereby he has security-cleared consultants on standby.

The delegate also explained that since he was appointed, he has requested additional powers from the Government: (1) that his power to conduct “inspections”, and not just “inquiries”, be recognized, and (2) that he be given the power to disclose information to other authorities about threats (often criminal) that certain complainants might be making.

A delegate asked whether any of the agencies involved with the complaints function ever cover the costs of lawyers in the case of successful complainants or conversely, awarded costs against a complainant when unsuccessful.

He was told that in Britain, the Law Lord works according to his own scale and makes his own assessment of the damages to be paid by the Government to complainants.

One delegate advised that to start requiring the complainants to pay costs when unsuccessful would go against the basic principle in his country’s legislation that the complaints process is free. In addition, and contrary to his predecessor’s recommendation, i.e., that the power to award compensation to complainants be added to the IG’s powers, he believes this would place the IG in the position of a court and, as such, would not be appropriate.

The conference delegates were asked if the staff of any of the agencies had encountered problems accessing information on behalf of those who actually had the statutory authority to request it, a problem encountered by SIRC in its early days.

This was described as a non-issue for the United Kingdom Committee, since its right to access had no statutory basis. However, if the Committee ever was denied access, it would be more of an embarrassment for the intelligence services than the Committee.

One Commonwealth delegate's opinion was that it was an evolutionary process. The initial agreement with the security services was that the IG alone reviewed the files on current operations, but as the agencies gained confidence in the office of the IG, staff have been permitted to accompany him.

A delegate raised the question of whether there was any movement towards greater accountability through the involvement of Parliament in the New Zealand and Australian systems.

The answer was that the system in neither country works well. The Committee of Parliamentarians in New Zealand sits very infrequently and is composed of members of the Executive. However, there is another committee which oversees the financial and policy issues of the two security agencies.

The Joint Parliamentary Committee for Australia's internal security organization has not received many references from the government. Another Senate Committee looks at Estimates. A Royal Commission has recommended that there also be a Parliamentary oversight committee for Australia's external security organization.

A delegate was interested in learning about the types of cases heard by the Integrity Committee in the U.S., the reports it issues and to whom, and how the IGs have dealt with the findings. She was told that there has only been one case involving the IG of an intelligence agency so far, and the agency was cleared. The Integrity Committee reports to the head of the agency.

Working Session #5: Has the Review Process Changed the Culture of the Security Agencies?

Madame Gauthier remarked that according to the Director of the Canadian Security Intelligence Service (CSIS) the presence of SIRC had changed the Service, and at a faster pace than they had anticipated. She invited Mr. David Peel, former Inspector General of CSIS, to share his views on the impact of the review process on the culture of the security and intelligence agencies.

David Peel, Former Inspector General of CSIS, Canada: In Mr. Peel’s opinion, the review process had not changed the culture of CSIS. He said that he was concerned that the opposite effect might be happening, and that the Service might be changing the culture of the review agencies instead.

Mr. Peel observed that if one is to view the change in culture in terms of more “openness”, his own experience demonstrated that the Service was still very reluctant to keep the review bodies and the Minister informed. Mr. Peel said that one indicator is how CSIS refuses to allow any of its officers to interact with or answer to the review bodies without the presence of a designated officer from Headquarters. He said that although at times this system did not cause a problem, at other times it was quite controlling and obtrusive.

In Mr. Peel’s opinion, the increased secrecy and the attitude of “plausible deniability” (not telling the Minister any more than he should know) raises a serious concern in terms of political accountability.

Mr. Peel remarked that a security agency is only truly accountable when it learns to accept the review process.

Mr. Peel said that while he was Inspector General, many people within the agency still remained contemptuous of and generally nonchalant about the review process. He said that it was difficult to convince the Service that review bodies were not out there to look for incidents or “foul-ups”. Rather, in Mr. Peel’s view, people within the Service saw the activities of review bodies as attacking their culture, and that they know best how to do their work. He added that because of this attitude, his office has had very little success in getting the Service to pay much attention to their findings and recommendations.

Mr. Peel commented that cultural change depends very much on the people who are working in the security agencies. Mr. Peel hoped that as the Service matures and the generation that has grown alongside the review bodies becomes senior management, the review bodies won’t be confronted with these problems.

A delegate explained that his office experienced similar problems in the beginning. He agreed that change in the culture of security intelligence organizations is only possible when there is a change in leadership: if you have someone at the top who has a positive attitude towards external review, then this attitude will permeate down through the organization.

Other delegates concurred that the level of support a review agency can expect from the agency it reviews is a function of the leadership, and how it perceives and supports the review function.

The response from one of the Canadian delegates was that part of the problem stems from the fact that CSIS never accepted that its direct relationship with the Minister was replaced in 1984 by the Inspector General - a civil servant - who would be the Minister's eyes and ears. He believes that it is the nature of security agencies to believe that to perform their functions well, they have to be independent of their political masters.

There was some consensus that SIRC's strength lay in the fact that it is independent of the Executive and that it reports to Parliament and not to Government. Whereas a delegate did not believe that the presence of SIRC changed the culture of CSIS, he believes that the adversarial function is necessary and nobody should feel that "I have done my job", but rather that "I have a job to do."

One delegate saw the problem as structural: CSIS is an internal security organization, which by its very nature, generates and consumes its own products and is not tasked externally. In his opinion, the Communications Security Establishment (CSE), which produces for other people, would probably be more responsive to the needs of external clients.

The contrary view from another delegate was that it is not so much a problem of who the IG reports to, but rather an attitudinal problem on the part of the agency toward the review body. He said that the American experience demonstrated that if the IG is to report to someone, it should be to the Director of the agency, who has a vested interest in knowing what is going on.

Mr. Peel was asked if he saw a structural reason for the issues surrounding the

Office of the Inspector General.

Mr. Peel answered that, in his view, both structural and attitudinal problems were involved. He said that, in his view, the system has a built-in tension and that the difficulties experienced by the IG will never be overcome without strong support from the Minister and the leadership of CSIS for the principles and activities of the review bodies.

Although he did not have any specific recommendation to offer, Mr. Peel was encouraged that as the Service grows out of its “police” mentality, the attitudes towards review will change.

A Canadian delegate said that the problem with the IG lies in the fact that it is both an internal and an external review mechanism. As a possible solution, he suggested that if the IG is to be an internal review mechanism, the agency should have to report to the Director, as is done in the U.S. Of course, this would require a change in the legislation. Another delegate asked whether SIRC, the IG or CSIS should take this message to the Government. She stated that experience had shown that simply replacing the IG would not be a solution.

In New Zealand, openness on the part of the security agencies has been a function of increasing openness on the part of government. The delegate observed that another factor was that the security agencies were supportive of the legislation that created the IG’s office.

A delegate asked whether, since no action has been taken by the Minister in Canada, it was in his best interest to keep this tension going. The reply was that the IG and SIRC are important to the Minister because they identify problems for that office.

A delegate wondered whether the office of the IG had good lines of communication with SIRC, and if so, whether SIRC was aware of these issues. The answer was that in the earlier years, SIRC met with the IG at least once a year, and sometimes more often. However, in recent years, they did not meet as often as perhaps they should have. A delegate said that SIRC has known about the difficulties surrounding the IG, but thought things would improve, as the Ministers, Directors, and IGs changed over the years.

In one delegate's opinion, for the IG to work effectively within the overall structure, the Deputy Minister has to be strong enough to carry the message to the Minister and the Service; this has proven to have been difficult.

Although there is no IG system in Belgium, tension is inevitably built into the relationship between the security agency and the Comité R. A delegate said that this tension is not necessarily negative for the security agency being reviewed: among other things, it puts the agency in a better public light due to a vigorous review process, and can also provide a voice for people within the agency who otherwise would not have any.

To a delegate from South Africa, having an IG was absolutely necessary and he hoped his country would soon have its own. In his opinion, however, the IG should not be the "eyes and ears of the Minister", but the "eyes and ears of governance, the country and its people". He observed that certain historical "givens" are no longer "givens" today, and as such, the services should not be the sole custodians of the State's secrets and thus should demonstrate more openness.

Mr. Peel stated that, although he experienced difficulties as an IG, he recognized that the underlying tension was built-in and unavoidable, and that the relationship was not meant to be a friendly one. However, he tried to convey that there was also room for improvement.

Madame Gauthier thanked Mr. Peel for his remarks and said that it gave the participants at the conference an excellent opportunity to discuss the role of the IGs.

Closing Remarks

A United Kingdom delegate commented that the Members of his Committee were fascinated by the internal Canadian debate and that it was appropriate that the conference had been held in Canada at this particular time. He said he hoped that a solution would be found.

The United Kingdom delegation then extended an invitation to the conference delegates to reconvene in two years time in London.

Madame Gauthier thanked the British delegation for the proposal and agreed that it would be useful to continue the conferences in light of the valuable information that is exchanged.