

Communications Security
Establishment Commissioner

The Honourable Jean - Pierre Plouffe, C.D.



Commissaire du Centre de la
sécurité des télécommunications

L'honorable Jean - Pierre Plouffe, C.D.

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Our file # 2200-81

March 31, 2016

The Honourable Harjit S. Sajjan, PC, OMM, MSM, CD, MP
Minister of National Defence
101 Colonel By Drive
Ottawa, ON K1A 0K2

Dear Minister:

The purpose of this letter is to provide you with the results of a review of Communications Security Establishment (CSE) [REDACTED] interception) under foreign signals intelligence (SIGINT) ministerial authorizations (MAs). The review was conducted under my authority as articulated in Part V.1, paragraph 273.63(2)(a) and subsection 273.65(8) of the *National Defence Act* (NDA), and in accordance with the Ministerial Directive on the [REDACTED] Program, March 15, 2004 ([REDACTED] MD). This directive was in effect during the period under review and has since been replaced with the Ministerial Directive on the [REDACTED] Program (November 20, 2012), which reflects the current name of the program.

In 2008, Commissioner Gonthier completed a comprehensive review focused on [REDACTED] activities. That report provides detailed background information, which remains generally applicable to current activities. Commissioner Gonthier found that CSE's activities were *not* conducted in accordance with all of the administrative requirements of the [REDACTED] MD. As a result, he recommended that CSE reconcile the discrepancies between its practices and the directive's requirements. Commissioner Gonthier also identified deficiencies relating to insufficient and incomplete records. One purpose of the present review was to follow up on CSE actions to address past recommendations and negative findings.

CSE conducts [REDACTED] activities under the authority of paragraph 273.64(1)(a) of the NDA, MAs and the [REDACTED] MD. The directive authorized CSE to [REDACTED]
[REDACTED]

In addition, the directive states that the Minister must authorize CSE [REDACTED]
[REDACTED]

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outlined in ministerial direction relating to security and risk management [REDACTED]
[REDACTED]

I found more than one instance where, because of a lack of guidance on what constitutes *costs or risks greater or significantly greater than activities previously conducted*, it could be argued that, prior to [REDACTED] CSE should have sought approval from the National Security Advisor to the Prime Minister or from the Minister. The new MD on the [REDACTED] Program contains, however, a new approval framework and additional guidance on assessing the disclosure risk [REDACTED] — including potential costs and cost-related risks — that my office will examine in a planned follow-up review.

Another specific purpose of the review was to better understand the impact of [REDACTED] activities on the privacy of Canadians. Compared with other SIGINT collection programs, [REDACTED] activities have repeatedly resulted in the [REDACTED] volume of communications collected by CSE. Not surprisingly, they have also resulted in the highest number of unintentionally intercepted private communications (PCs) recognized by CSE.

My office sought metrics for the number of [REDACTED] communications intercepted by CSE for, and sent to, its five eyes partners. CSE provided information on all traffic [REDACTED] sent to its second party partners from [REDACTED] (collection) for a six-month period. Existing CSE systems do not automatically track and record such information, and it is currently difficult and time-consuming to obtain it. In 2013, in the context of a review of SIGINT MAs by Commissioner Décary, CSE indicated that it was working on a technical solution to track the number of communications intercepted by CSE and sent to its five eyes partners. In a subsequent review, my office will examine CSE efforts to address this problem and provide this information, which I believe is important to know for accountability.

Given the scope and nature of [REDACTED] activities, the issues continuing from the previous comprehensive review, and the time that has elapsed since this review was started, I will commence a new review of CSE's [REDACTED] program in the next fiscal year, and I will monitor that responses from CSE are provided in a timely manner.

Prior to finalizing this letter, my office provided CSE officials an opportunity to review and comment on the results of the review, for factual accuracy.

If you have any questions or comments, I will be pleased to discuss them with you at your convenience.

Yours sincerely,



Jean-Pierre Plouffe

c.c. Ms. Greta Bossenmaier, Chief, CSE