

**TOP SECRET**

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**CERTIFICATION OF THE DIRECTOR'S ANNUAL  
REPORT TO THE MINISTER OF PUBLIC SAFETY**

**(SIRC STUDY 2012-09)**

**Security Intelligence Review Committee  
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## TABLE OF CONTENTS

<b>1. INTRODUCTION .....</b>	<b>3</b>
<b>2. METHODOLOGY .....</b>	<b>4</b>
<b>3. OVERVIEW OF SIRC CERTIFICATION .....</b>	<b>5</b>
<b>4. SATISFACTION WITH THE DIRECTOR'S REPORT .....</b>	<b>6</b>
4.1. Ministerial Reporting Requirements.....	6
4.2. Factual Accuracy.....	6
4.3. Fair and Accurate Representation of CSIS Activities - Overview.....	7
4.3.1. Fair and Accurate Representation of CSIS Activities - Operations Abroad.....	7
4.3.2. Fair and Accurate Representation of CSIS Activities - S. 16 Collection of Foreign Intelligence.....	9
<b>5. COMPLIANCE WITH THE CSIS ACT AND MINISTERIAL DIRECTIVES AND EXERCISE OF SERVICES POWER .....</b>	<b>11</b>
<b>6. CONCLUSION.....</b>	<b>12</b>

## 1. INTRODUCTION

In June 2012, the *Jobs, Growth and Long-term Prosperity Act* abolished the position of Inspector General of the Canadian Security Intelligence Service (IG CSIS) and required the Security Intelligence Review Committee (SIRC or the Committee) to fulfill some of the responsibilities previously performed by the Office of the IG CSIS. Pursuant to section 38(2) of the *Canadian Security Intelligence Service Act (CSIS Act)*, SIRC is now required to submit a Certificate to the Minister of Public Safety stating the extent to which it is satisfied with the Director of the Canadian Security Intelligence Service's (CSIS or the Service) Report, and stating whether, in SIRC's opinion, the operational activities described in the Director's Report contravened the *Act* or Ministerial Directives and whether the activities involved any unreasonable or unnecessary use of the Service's powers.

## 2. METHODOLOGY

The statements required by section 38(2) of the *CSIS Act* amount to significant assurances regarding the legality, reasonableness and necessity of the Service's operational activities. Moreover, the Director's Report has been, in recent years, a useful and comprehensive overview of the whole of CSIS operations. The Report for fiscal year 2011-2012 was no exception in that it provided a summary of the major operational accomplishments and challenges faced by the Service over the previous year. As a result, SIRC found that certifying the "operational activities described in the report" meant certifying a high-level description of almost the whole of CSIS's activities for fiscal year 2011-2012.

To provide assurances on such a broad spectrum of Service activity, SIRC conducted an extensive review of CSIS information holdings. SIRC also leveraged its extensive existing expertise and knowledge of the Service's activities to support the certification process; underscoring all SIRC's ongoing review work is a consideration of the legality, reasonableness and necessity of the Service's activities. As this long-standing approach is consistent with the new requirements for the production of the Certificate, SIRC was able to draw on its existing review activities to inform the production of the 2011-2012 Certificate.

This consistency of approach between SIRC's review work and the certification process also addressed the issue of how to maintain the arm's length independence embodied in SIRC's original mandate while simultaneously fulfilling SIRC's new legislative requirements. Since the methodology employed in SIRC's certification process is quite similar to the approach required to fulfill its other legislative responsibilities, there is no inherent conflict between SIRC's responsibility to report to Parliament and its provision of a Certificate to the Minister. Indeed, the issues identified in SIRC's certification of the 2011-2012 Director's Report were addressed in recent SIRC studies and described in SIRC's 2011-2012 Annual Report to Parliament.

It should be noted that this certification pertains exclusively to the operational activities as they are described in the Director's Report. The outcomes and operations described in the Director's Report are the result of a myriad of individual investigative activities; it is these types of investigative activities which are the subject of the in-depth reviews that SIRC conducts on an annual basis. Accordingly, SIRC's certification of the operational activities described in the Director's Report does not preclude the possibility that further, in-depth reviews into these individual investigative activities could reveal instances of non-compliance with either the *Act* or Ministerial Directives, or would identify Service activities that SIRC considers unreasonable or unnecessary.

### 3. OVERVIEW OF SIRC CERTIFICATION

Notwithstanding three issues, which are described in detail in this Certificate, SIRC is satisfied with the Director's Report on the Service's operational activities for the 2011-2012 reporting period. In addition, it is SIRC's opinion that the operational activities, as they are described in the Director's Report, did not contravene the *CSIS Act* or Ministerial Directives, nor did they involve the unreasonable or unnecessary use of the Service's powers.

#### 4. SATISFACTION WITH THE DIRECTOR'S REPORT

The purpose of the Director's Report, submitted pursuant to section 6(4) of the *CSIS Act*, is to provide the Minister with information to assist him in exercising Ministerial responsibility for CSIS. Accordingly, SIRC's satisfaction with the Report was based on whether the Director's Report fulfilled that function. SIRC measured this against three criteria: first, whether the Report met the Ministerial reporting requirements set out in the 2008 Ministerial Directives on Operations and the 2011-2012 Ministerial Directives on Intelligence Priorities; second, whether the Report was factually accurate; and, third, whether, in SIRC's opinion, the Report provided an accurate representation of CSIS activities during the 2011-2012 fiscal year.

##### 4.1. Ministerial Reporting Requirements

With respect to Ministerial reporting requirements, SIRC found that the Director's Report addressed all of the reporting requirements set out in the 2008 Ministerial Directives on Operations. However, the Director's Report did not account for how the Service's resource allocations related to its 2011-2012 Intelligence Priorities, which was a reporting requirement introduced by the Minister in October 2011.<sup>1</sup> When questioned, the Service informed SIRC that, although this issue was not specifically addressed in the Director's Report, the Service provided the Minister with information on this issue through its 2011-2012 Memorandum to Cabinet on Intelligence Priorities. In addition, the Service indicated that the Treasury Board Secretariat addressed this issue through the National Security Expenditure Report, which provided Ministers with data on the Security and Intelligence community as a whole.<sup>2</sup> Accordingly, this omission did not detract from SIRC's overall satisfaction with the Director's Report.

##### 4.2. Factual Accuracy

Regarding the accuracy of the Director's Report, SIRC is of the opinion that the information provided by the Director's Report was, on the whole, factually accurate. SIRC reviewed the statements in the Report against CSIS information holdings, and, where warranted, SIRC submitted written requests for additional documentation and clarification. On the basis of this review, SIRC determined that, with the exception of two statements, the Director's Report was fully supported and appropriately documented. The errors identified related to the inaccurate characterization of the status of one foreign arrangement<sup>3</sup> and the omission of one operation in the total number of

<sup>1</sup> Ministerial Direction to the Director of the Canadian Security Intelligence Service: Intelligence Priorities for 2011-2012, October 26, 2011.

<sup>3</sup> Email from CSIS ERL to SIRC Senior Research Advisor, February 11, 2013.

the Service conducted \_\_\_\_\_ in Canada.<sup>4</sup> However, SIRC is of the opinion that these errors did not detract from the overall meaning and accuracy of the Report, and the Committee has, therefore, addressed these errors with the Service separately.

SIRC also considered the factual accuracy of the statements in the Director's Report in light of SIRC's extensive corporate knowledge of CSIS activities. Each year, SIRC conducts in-depth studies of a sample of CSIS activities. Though these studies are not chosen specifically to support the Certificate process, these review activities did mean that SIRC has considerable knowledge of the operations described in the Director's Report. In this regard, SIRC did not identify any significant inconsistencies between its own knowledge of CSIS activities and the manner in which they were presented in the Director's Report.

#### 4.3. Fair and Accurate Representation of CSIS Activities - Overview

SIRC considered whether the Director's Report provided an accurate representation of CSIS activities during the 2011-2012 reporting period. To make this determination, SIRC submitted written requests for information on CSIS operational activities. This included requests for statistics on the Service's core activities such as targeting, human source operations and warrant applications as well as information on foreign and domestic liaison, technical and operational support, foreign operations and security screening. The Service's responses enabled SIRC to construct a comprehensive picture of the extent of Service activities, and permitted SIRC to assess the Director's Report against this bigger picture.

In reviewing this information, SIRC saw evidence of a few important trends. SIRC noted, for example, that the Service obtained warrant powers from the Federal Court against only a small portion, \_\_\_\_\_ of its individual targets. SIRC viewed this as one indication that, in 2011-2012, the Service used its most intrusive powers sparingly, which is consistent with the "strictly necessary" provision contained in the CSIS Act and the 2008 Ministerial Directives on Operations. SIRC also observed that while \_\_\_\_\_ decreased from last fiscal year, \_\_\_\_\_ remained the same or increased. This was an indication to SIRC that, in 2011-2012, the Service \_\_\_\_\_ the Service is making an effort to increase its efficiency in a fiscal environment where resources have become more limited.

<sup>4</sup> Email from CSIS ERL to SIRC Senior Research Advisor, April 23, 2013.

#### **4.3.1. Fair and Accurate Representation of CSIS activities – Operations Abroad**

In its 2011-2012 Annual Report to Parliament, SIRC stressed that, as the Service engages in more overseas activities, there will be greater and more lethal potential risks that it cannot fully manage or mitigate. Review of the Service's 2011-2012 foreign operations, which was conducted as part of SIRC's certification process, revealed that this remains an important concern. For example, SIRC observed that during the 2011-2012 reporting period, the Deputy Director Operations (DDO) designated certain geographical areas as a Dangerous Operating Environment (DOE) meaning that in these locations, in addition to other considerations, Service employees may be required

SIRC believes such designations and the potential need for Service employees are important indicators of the type of threats to personnel safety that are inherent in certain of the Service's overseas activities.

In addition, during a review of the approval documentation for the overseas operations that the Service carried out in 2011-2012, SIRC noted



As the purpose of the Director's Report is to provide the Minister with information to support Ministerial responsibility for CSIS, and given the extent and risks associated with the Service's foreign operations, SIRC would have expected the Report to contain a more detailed explanation of the Service's activities overseas. Such an explanation could have included the number and type of operations approved, the locations in which they occurred, the types of risks facing Service employees and the potential impact of such operations. The Director's Report, however, provided little information. Indeed, the one paragraph that addressed the issue of foreign operations specified only that the Service conducts overseas operations involving CSIS employees.

SIRC is of the opinion that more detailed information, of the type cited above, would have provided a more accurate and representative description of the Service's foreign operations and would help provide the Minister with a better understanding of the resulting elevated threats to the lives of Service employees For this reason, the Director may wish to consider including such information in next year's Report.

#### **4.3.2. Fair and Accurate Representation of CSIS activities – S. 16 Collection of Foreign Intelligence**

Review of the Director's Report revealed that it provided only minimal information on the Service's activities in support of its s.16 foreign intelligence collection mandate. Indeed, the Report contained only one specific reference to its s. 16 program.

Accordingly, SIRC found that the description of the Service's activities in the area of s. 16 collection was not representative of the Service's activities. SIRC determined, however, that this lack of detail in the Director's Report was likely due to

As SIRC observed in its review entitled "CSIS Intelligence Production and Dissemination," during the 2011-2012 reporting period,

Accordingly, SIRC is of the opinion that, though the Director's Report did not make specific reference to the Service's s. 16 investigations,

SIRC believes that the Report could have provided the Minister with a more complete understanding of the Service's activities in this area if it had specified which collection activities also supported the s. 16 program. However, SIRC is aware

As such, this may not be an issue for next year.

With the exception of the issues cited above, SIRC is of the opinion that the Director's Report is a fair and accurate representation of the Service's activities during the 2011-2012 reporting period. SIRC found that the Report provided a comprehensive overview of the Service's subjects of investigation, its collection and investigative activities and the advice it provided to government pursuant to sections 12 to 20 of the *CSIS Act*. Furthermore, SIRC found that the content of the Director's Report was consistent with SIRC's knowledge of CSIS's activities in support of these legislative duties and functions.

## 5. COMPLIANCE WITH THE CS/S ACT AND MINISTERIAL DIRECTIVES AND EXERCISE OF SERVICES POWER

In addition to requiring SIRC to state its satisfaction with the Director's Report, s. 38(2) of the *CS/S Act* requires SIRC to state whether, in its opinion, the operational activities described in the Director's Report contravened the *Act* or Ministerial Directives and whether the activities involved any unreasonable or unnecessary use of the Service's powers.

To make this assessment, SIRC conducted an extensive examination of the review environment. This included a review of recent changes to the *CS/S Act*, the authorities for the Service to collect s. 16 information, and relevant Ministerial Directives and Intelligence Priorities. It also included an examination of the Service's internal governance framework including the DDO's Directives and the Service's operational policies.

SIRC found that, with one exception, the Service's internal governance structure upholds the *CS/S Act* and Ministerial Directives. SIRC determined that the Service's practice of sharing information with domestic and foreign signals intelligence (SIGINT) agencies is potentially problematic in terms of compliance with Ministerial Directives on information sharing. This was not an issue that came to light during the certification process exclusively. Rather, it first came to light in the context of a SIRC review entitled "CSIS's Relationship and Exchanges with the Communications Security Establishment Canada," which examined the issue during the period covered by the 2011-2012 Director's Report. In that study, it was not clear how CSIS is able to comply with Ministerial Directives stipulating that caveats must be used when sharing information with domestic and foreign recipients, when the manner in which SIGINT collection and dissemination functions run contrary to this expectation. For its part, CSIS has, in reaction to SIRC's review, acknowledged that addressing concerns on this complex subject "remains a work in progress." For the purposes of certifying the Director's Report, SIRC did not characterize this issue as an instance of non-compliance with Ministerial Directives. Nevertheless, SIRC believes that it is of sufficient concern that it warrants the Minister's consideration.

With the exception of this one area, SIRC is of the opinion that the activities, as they are described in the Report, comply with the *Act* and MD and constituted a reasonable and necessary exercise of the Service's powers. Specifically, SIRC determined that the activities described in the Report were consistent with the duties and functions specified in sections 12-20 of the *CS/S Act* and complied with relevant s. 16 requests from the Ministers of Department of Foreign Affairs and National Defence, and with Ministerial Directives on operations, Information Sharing and Intelligence Priorities.

## 6. CONCLUSION

It is SIRC's opinion that the operational activities, as they are described in the Director's Report, did not contravene the *CSIS Act*, Ministerial Directives, nor did they involve the unreasonable or unnecessary use of the Service's powers.

During the certification process, SIRC found that the Director's Report was a useful and comprehensive overview of the whole of CSIS operations. Nevertheless, SIRC determined that the Director's Report did not contain a detailed description of the Service's activities in support of s. 16 collection. As these activities are an integral part of the Service's operations, SIRC believes that a more detailed description was warranted.

SIRC also found that the Director's Report did not contain a sufficiently detailed description of the Service's foreign operations. SIRC is of the opinion that more detailed information would have provided a more accurate and representative description of the Service's foreign operations and would help provide the Minister with a better understanding of the elevated threats to the lives of Service employees in this environment. As such, the Director may wish to consider including such information in next year's Report; SIRC believes that this issue is of sufficient concern that it warrants the Minister's attention and continued consideration.

Finally, SIRC noted that the Service's practice of sharing information with domestic and foreign SIGINT agencies is potentially problematic in terms of compliance with Ministerial Directives on information sharing. Though SIRC did not characterize this issue as an instance of non-compliance with Ministerial Directives, SIRC believes that it is of sufficient concern that it warrants the Minister's consideration.

Notwithstanding these issues, SIRC is satisfied with the Director's Report on the Service's operational activities for the 2011-2012 reporting period.