

# SECURITY INTELLIGENCE REVIEW COMMITTEE

TOP SECRET - CEO

## **SIRC REVIEW 2015-05** **CSIS'S TRADITIONAL AND NON TRADITIONAL** **FOREIGN PARTNERS**

### SUMMARY

- The increasing complexity and transnational nature of threats to the security of Canada require CSIS to exchange information and cooperate with foreign agencies in a growing number of investigations to fulfill its mandate and collection requirements.
- SIRC found that the procedures in place around joint operations are clear and detailed, with room for discussion between CSIS HQ and regional offices, reflecting the value of both the strategic and tactical aspects of operational planning.
- SIRC found that in two instances, CSIS approved leveraging an existing s. 17 arrangement to cooperate with a foreign agency with which it did not have a s. 17 arrangement or Ministerial approval.
- SIRC recommends that CSIS, when cooperating in the absence of a valid s. 17 arrangement, seek Ministerial approval as per the CSIS Act or follow Ministerial Direction if exigent circumstances apply.

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# 1 INTRODUCTION

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Cooperation between and among foreign intelligence agencies is by no means new. Some of the most important examples of foreign cooperation and liaison relationships are those that developed among the “Five Eyes” partners - a multilateral alliance between the United States, United Kingdom, Australia, Canada and New Zealand. This alliance dates back to the post-Second World War division of effort in the collection of signals intelligence to counter the Soviet threat. Building upon the political and economic relationships already established among these countries, this alliance gradually broadened in scope to include human source intelligence agencies like CSIS, leading to greater information-sharing, joint operations and support.

The increasing complexity and transnational nature of threats to the security of Canada require CSIS to exchange information and cooperate with foreign agencies in a growing number of investigations to fulfill its mandate and collection requirements.<sup>1</sup> Although CSIS has decades of experience in running joint operations with its Five Eyes partners, as well as some agencies outside the alliance, the changing threat environment is increasingly requiring more frequent and substantial collaboration with non-traditional partners. Some of these are new relationships while others have been long-time partners on particular files but have grown, in the past several years, to become close allies on an increasing number of investigations.<sup>2</sup>

In this review, SIRC examined how CSIS, through policy, internal consultation and guidance, and through actively seeking out engagement with non-traditional partners, has prepared itself to achieve its collection requirements in an increasingly complex and dynamic threat environment. More broadly, this review provided SIRC with insight into the nature and scope of CSIS's evolving relationships with foreign partners through the lens of joint operations and operational support.

SIRC selected a sample of joint operations involving some non-traditional partners outside of the Five Eyes for review. Overall, SIRC found that the policies and procedures in place were sound and the investigations reviewed were clearly related to CSIS's mandate and collection requirements. There are two recommendations stemming from this review that relate to CSIS's arrangements with foreign agencies, specifically that CSIS begin with narrow s. 17 arrangements when human rights

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concerns are at play and that CSIS not leverage third party arrangements in order to cooperate with a partner in the absence of a s. 17 or Ministerial approval.

## 2 METHODOLOGY

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This review examined CSIS's activities related to joint operations and operational support in the context of operations with non-traditional partners. SIRC assessed CSIS's approach to, and management of, joint operations and cooperation by focusing on the governance framework surrounding these activities and compliance with Ministerial Direction and internal policies.

SIRC reviewed files in depth, including all operational messages and related information exchanges with allied agencies. In addition, corporate policy documents related to joint operations and assistance were examined. SIRC held briefings with CSIS Headquarters staff

Written questions were also submitted seeking clarification on specific files.

The core review period was from January 1, 2013 to September 30, 2015, although SIRC examined relevant documents outside that time period.

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### 3 BACKGROUND

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CSIS's foreign arrangements and cooperation are governed by paragraph 17(1) (b) of the *CSIS Act*, the Ministerial Directive on Foreign Arrangements and internal policies. New arrangements must be approved by the Minister of Public Safety after consultation with the Minister of Global Affairs Canada. When the Minister of Public Safety authorizes a new foreign arrangement, he or she may impose a caveat requiring that CSIS seek ministerial approval to renew the arrangement in a given period of time. In order to renew the arrangement, CSIS must include an updated assessment of their relationship with the foreign partner and the rationale as to the benefit of engaging with the foreign partner. Arrangements may also be put into the dormant category after a year of inactivity or be suspended/restricted, often due to concerns about human rights issues or third party rule violations. Depending on the scope of an arrangement, CSIS may

Joint operations are “an activity that seeks to advance an investigation of mutual interest to the participants by combining resources and sharing the product.”<sup>3</sup> This is differentiated from operational assistance which is “an activity undertaken by the Service on behalf of a requesting organization or vice versa,

Both joint operations and  
operational assistance can take place either in Canada or abroad.

CSIS has positioned itself to leverage its foreign partnerships through joint operations in several ways. First, CSIS has updated operational policies and issued directives to clarify certain activities related to joint endeavors. Second, CSIS held internal consultations with staff in order to identify best practices and methods towards ensuring successful joint operations. These best practices assist in proactively identifying potential challenges and ensuring that potential pitfalls are recognized at the beginning of an operation. Additionally, CSIS expanded its partnerships by entering into new arrangements and reactivating some that had been put into the dormant category. Finally, CSIS is developing more robust partnerships with existing partner agencies that may not have been close allies in the past, but now, with similar collection requirements, are becoming higher priority partners. This greater cooperation with non-traditional foreign partners has led CSIS to strategically do more on specific files and geographic

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## 4 JOINT OPERATIONS AND COOPERATION

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Cooperation, beyond CSIS's traditional partners, in the context of an ever evolving threat environment, is often required

The transnational nature of terrorism and the conflict in the Middle East are affecting a number of countries throughout the world, resulting in a growing number of countries, beyond the traditional Five Eyes partners, having intelligence requirements that closely resemble those of Canada. This makes cooperation and burden sharing with a greater number of foreign agencies more likely.

Past SIRC reviews have noted that access to certain areas of the world is difficult, and liaising/working with foreign partners is crucial

While CSIS was building up its overseas capacity, it often relied on cooperation with foreign agencies. Although CSIS has developed more capacity to operate independently abroad, there are still issues which require cooperation with allies, including those beyond the Five Eyes.<sup>8</sup>

CSIS not only relies on its foreign partners for information, but also to cooperate on a number of investigations, including joint operations

Within this context, SIRC examined the policies and procedures governing joint operations.

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<sup>8</sup> Director's Report to the Minister – April 1, 2014 – March 31, 2015.

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#### 4.1 Policy and Procedures

Subsequently, a number of procedures were released throughout 2014 and 2015 which recognize the importance and increased priority of engaging with partners for successful intelligence collection efforts.<sup>12</sup>

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#### 4.2 Internal Consultations and Best Practices

There are specific challenges that come with joint operations

As the  
complexity of operations increases, so too does the potential for problems.

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Overall, SIRC found that the procedures in place around joint operations are clear and detailed, with room for discussion between CSIS HQ and regional offices, reflecting the value of both the strategic and tactical aspects of operational planning.

### 4.3 New and Expanding Partnerships

The 2014-02015 Director's Report to the Minister notes the increased value of "the Service's foreign arrangements" and how "new foreign arrangements were implemented to enhance the Service's ability to collect on the threat posed by ISIL, and the terrorist travel phenomenon more broadly."

CSIS is not restricted from entering into arrangements with poor human rights records; however, according to Ministerial Direction for Operations and Accountability, "arrangements with countries or international organizations that do not share Canada's respect for democracy or human rights will only be considered where contact is required to protect the security of Canada."

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SIRC has previously commented that the requirement to work and deal with a limited pool of potentially problematic partners in certain parts of the world is inevitable; this reality is nonetheless juxtaposed with reasonable questioning and research on the questionable track record of some of these agencies and its personnel.<sup>19</sup> Human rights organizations do not always specify the particular offending agency in their reports. Instead terms such as “security forces”, “authorities”, and “officials” are often employed. These may or may not be the agencies with which CSIS is intending to enter into arrangements. Although cooperation is required to fulfill CSIS’s mandate, continued vigilance and caution is prudent in many countries with questionable human rights. **SIRC found that, in some cases, CSIS showed prudence in establishing s. 17 arrangements with smaller units within foreign agencies while in others, CSIS started with a broad s. 17.** Going forward, **SIRC recommends that CSIS, if faced with the necessity to cooperate with partners in countries with human rights concerns, begin with an arrangement with a narrowly defined unit(s) within the foreign agency before considering expanding the arrangement to the broader agency.**

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## 5 JOINT OPERATIONS FILE REVIEW

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joint operations that involved CSIS cooperation with non-traditional partners who are not part of the Five Eyes alliance.

**SIRC found that, in these two cases, CSIS followed policy and was mindful that its mandate requires there to be a nexus to a threat to Canada.**

In contrast, SIRC found two instances where CSIS did not follow policy on cooperating with a foreign partner. The first case was a complex joint operation

The second case was a request for approval of operational assistance and collaboration

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CSIS's position is that it can benefit from a s. 17 partner's relationship with a third party in the context of an approved joint operation or a request for operational assistance.<sup>24</sup> SIRC believes, however, that this is contrary to the *CSIS Act*.

Paragraph 17(1)(b) states that, for the purpose of performing its duties and functions, CSIS may, with the approval of the Minister after the Minister's consultation with the Minister of Foreign Affairs, enter into an arrangement or otherwise cooperate with the government of a foreign state or an institution thereof or an international organization of states or institution thereof. SIRC's position is that cooperation should not be undertaken through a third party as this bypasses the requirement in the legislation for Ministerial approval. In these two cases, SIRC did not find that CSIS was in violation of the *CSIS Act* as these operations did not progress to the point of execution.

SIRC understands that there are circumstances which may require CSIS to engage or cooperate with foreign organizations without an arrangement.

However, there is a process in place that allows CSIS to cooperate in the absence of an arrangement. According to CSIS policy, the Director is authorized to undertake whatever exchanges or cooperation are necessary under exigent circumstances provided that the Director advises the Deputy Minister of Public Safety as soon as possible.<sup>25</sup> In the two cases above, this procedure could have been followed to ensure that the cooperation adhered to CSIS's internal policy and the *CSIS Act*, and SIRC does not question the need for operational assistance in either of these cases.

**SIRC found that in two instances, CSIS approved leveraging an existing s. 17 arrangement to cooperate with a foreign agency with which it did not have a s. 17**

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and SIRC briefing with

February 8, 2016

25 CSIS Policy: Conduct of Operations, Effective 2014-01-10; Section 4.1.1

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**arrangement or Ministerial approval. SIRC recommends that CSIS no longer leverage the relationship of a third party to cooperate in the absence of a valid s. 17 arrangement, but rather seek Ministerial approval as per the CSIS Act and Ministerial Direction.**

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## 6 CONCLUSION

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Overall, there is great value in cooperating with foreign partners

Going forward, SIRC expects that CSIS will continue to leverage its foreign partners in order to fulfill its collection requirements, and in doing so, will enter into a greater number of cooperation arrangements. SIRC expects CSIS to continue to be vigilant when cooperating with partners that may be implicated in questionable human rights activities, as we follow its own policies and procedures.

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