

## **The Inspector General of the Canadian Security Intelligence Service**

*by*  
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### **INTRODUCTION**

Although Canada maintains several agencies with intelligence and security functions,<sup>1</sup> the body of publicly-available literature on the security-intelligence community in Canada, despite growing research interest, is still quite limited. This is especially true with respect to the office of the Inspector General of the Canadian Security Intelligence Service (CSIS). The media has devoted little attention to this institution, which helps to ensure the political control of Canada's security service. Academics who have examined the review processes established by the *Canadian Security Intelligence Act* (the *CSIS Act*) have usually confined most of their attention to the Security Intelligence Review Committee (SIRC).<sup>2</sup> Therefore, this paper focuses on the role and functions of the Inspector General.

### **HISTORICAL BACKGROUND**

In July 1977, the McDonald Royal Commission was appointed by Order in Council to investigate alleged illegal or improper activities by the Royal Canadian Mounted Police (RCMP). After conducting extensive hearings, in August 1981 the commissioners recommended that "the Government of Canada establish a security intelligence agency, separate from the R.C.M.P., and under the direction of the Solicitor General and the Deputy Solicitor General."<sup>3</sup> In order to create the new agency, Bill C-157 was introduced in Parliament in May 1983. Whereas the McDonald Commission had recommended control by means of an Advisory Council on Security and Intelligence and a joint Parliamentary committee, the proposed legislation suggested a two-tiered system comprising an Inspector General and a Security Intelligence Review Committee, which was felt by many at the time to be a weaker system. Because of the absence of effective safeguards or review mechanisms, and the vagueness of the proposed agency's mandates, the Bill met with strong opposition.<sup>4</sup> Therefore, the government decided, rather than proceed to a further meeting, that a special committee of the Senate, chaired by Senator Michael Pitfield, should examine the provisions of the Bill and recommend suitable amendments.

Although some witnesses commented on the idea of an Inspector General and suggested different approaches to the review process,<sup>5</sup> the Pitfield Committee supported the main elements of the government's proposals. However, it was felt necessary to make the controls more stringent in order to satisfy critics of the legislation.

The Pitfield Committee stated that the obvious intent of the provisions of Bill C-157 with respect to the Inspector General was that he should provide:

for the political masters of the agency, ongoing information as to its functioning. If the Solicitor General is to be politically responsible he must know what is going on in the agency, through his deputy. The Inspector General will be the ministry's "eyes and ears" on the Service. He will be very much the "minister's man," in order to maintain an appropriate degree of ministerial responsibility and is not to be regarded as a functionary of the CSIS.<sup>6</sup>

The Pitfield Committee also felt that the Bill should be amended "to make it clear that the Inspector General is not to be limited to after-the-fact review of operations, but is to have the function of ensuring that existing policies are being observed."<sup>7</sup> Therefore, the Pitfield Committee clearly envisioned an office of the Inspector General that, unlike the Review Committee, would provide an ongoing review of operations conducted by the Service.

Having allowed Bill C-157 to die in Parliament, the government subsequently introduced Bill C-9, which closely followed the recommendations of the Pitfield Committee.<sup>8</sup> Although Bill C-9 was also vigorously opposed, especially by the New Democratic Party, the position and powers of the Inspector General received "comparatively little criticism." Some Members of Parliament, however, felt that his credibility could be improved greatly if there was all-party consultation before his appointment.<sup>9</sup> One of the main concerns raised was that the Inspector General would not be able to see Cabinet documents.<sup>10</sup> On July 16, 1984, the *CSIS Act* was proclaimed, and the CSIS formally came into existence.<sup>11</sup> Sections 30 to 33 of the *CSIS Act* established the office of the Inspector General.<sup>12</sup>

## THE ROLE AND FUNCTIONS OF THE INSPECTOR GENERAL

In the Canadian political system, Ministers "are constitutionally responsible for all of the operations of their departments."<sup>13</sup> As such, the Solicitor General is ultimately responsible to Parliament for the actions of the CSIS. The Inspector General is an official within the Department of the Solicitor General whose statutory functions are to monitor the compliance by the CSIS with its operational policies,<sup>14</sup> and to review the operational activities of the Service.<sup>15</sup> He must also submit certificates to the Solicitor General regarding each report made by the Director of the CSIS to the Minister concerning the operational activities of the Service.<sup>16</sup> It should be noted, however, that according to the provisions of the *CSIS Act* the Inspector General is made responsible not to the Minister, but to the Deputy Solicitor General.<sup>17</sup>

The Inspector General is entitled to have access to any information under the control of the Service that relates to the performance of his duties and functions. He also is entitled to receive from the Director and CSIS employees such information, reports and explanations as the Inspector General deems necessary for the performance of those duties and functions,<sup>18</sup> with the exception of confidences of the Queen's Privy

Council.<sup>19</sup> Besides this proviso, both the Review Committee and the Inspector General "have full access to the files of the Service."<sup>20</sup> The Inspector General must comply with all the security requirements that are applicable under the *CSIS Act* to an employee of the CSIS, and has to take an oath of secrecy.<sup>21</sup>

A copy of every report by the Director upon the operational activities of the Service must be given to the Inspector General.<sup>22</sup> Thereafter, as soon as practicable, the Inspector General must submit to the Solicitor General a certificate stating the extent to which he is satisfied with the report and whether "any act or thing" done by the Service in the course of its operational activities during the period to which the report relates is, in his opinion, not authorized by the *CSIS Act*, or contravenes any ministerial directions that have been issued,<sup>23</sup> or involves "an unreasonable or unnecessary exercise by the Service of any of its powers."<sup>24</sup> As soon as "practicable" thereafter, the Solicitor General must forward the Director's report and the certificate of the Inspector General to the Review Committee.<sup>25</sup> Therefore, the Inspector General's major role is "to strengthen the internal review of the Service which is the responsibility of the Solicitor General."<sup>26</sup>

The process by which the Service's annual report is reviewed by the Inspector General, in preparation for his certificate, takes from about thirty to forty-five days, although the Inspector General's staff will normally have been carrying out operational audits in the preceding eight months in anticipation of the certificate's preparation. The certificates are "substantial documents produced with considerable effort and within a tight time frame."<sup>27</sup> Until recently, the Director of the CSIS wrote his report to cover the year's activities up to December<sup>31</sup>, with the report produced by the end of February. The Inspector General then finished his certificate by mid-April, which gave the Review Committee about six weeks to take the two reports into account when writing its report.<sup>28</sup> Therefore, the Review Committee was not able to table its annual report in Parliament until June, with the statutory limit being three months after the end of the fiscal year (that is, June 30).<sup>29</sup> The CSIS wished to produce its reports on a fiscal year basis, and the *Miscellaneous Statute Law Amendment Act, 1987*, which stated that the Review Committee need not submit its report until September 30, made this possible.<sup>30</sup>

Because the Review Committee receives from the Minister copies of both the Director's report and the certificate issued by the Inspector General, and because the Inspector General may be directed by the Review Committee to conduct investigations into specific activities of the Service and provide them with a report of the review,<sup>31</sup> "his office is something more than just an internal review mechanism. It is also the link between the internal and external review functions so carefully put in place by Parliament."<sup>32</sup> That is, while the Inspector General is external to the CSIS, his functions are internal to the Ministry of the Solicitor General; and while the Review Committee reports to Parliament, the Inspector General's role is to advise the Government.<sup>33</sup> Therefore, the

intention is that the Inspector General should act ideally as an internal review body which enjoys the confidence of Canadians, reporting to Parliament through the Solicitor General; and also as an institution that advises the executive arm of government, again through the Solicitor General, on the performance of the CSIS, particularly with respect to compliance.<sup>34</sup>

### **THE OFFICE OF THE INSPECTOR GENERAL**

By Order in Council, Dr. Richard Fraser Gosse, QC, was appointed the first Inspector General of the CSIS, with effect from April 1, 1985.<sup>35</sup> As Deputy Attorney General for Saskatchewan, he had been involved in federal-provincial consultations related to the proposed CSIS legislation and, after its passage, co-chaired a federal-provincial deputies committee with Deputy Solicitor General Fred Gibson to develop the arrangements contemplated under sections 17 and 61 of the new Act.<sup>36</sup> In the course of this work he came to the attention of Solicitor General Elmer MacKay, who offered him the position of Inspector General.

Nearly nine months after the passage of the *CSIS Act*, Dr. Gosse began his duties in Ottawa, based at the offices of the Solicitor General of Canada. As the first incumbent of the position of Inspector General, there was no establishment when he arrived. Although the Solicitor General's Secretariat had asked for a staff of seven, for the fiscal year 1985-86 it was given budget authorization for only five person years, inclusive of the Inspector General. However, an organizational structure was later approved by the Treasury Board in December 1985,<sup>37</sup> and by March 1987 the number of staff in place was twelve, which is currently felt to be adequate to perform all the statutory functions.<sup>38</sup> Staff were selected in order to obtain:

an appropriate mix of experience and other qualifications to perform a function that requires good judgement, investigational and analytical skills, and a sensitivity to national security issues, on the one hand, and the rights of the citizen to liberty and privacy, on the other.<sup>39</sup>

As part of the Department of the Solicitor General, the Inspector General is regarded as within the Secretariat (see Figure 1), at least for budgetary purposes, and he also utilizes the facilities of the Administration Branch.<sup>40</sup> The Assistant Inspector General (Operations) is primarily responsible for the audit and review of the Service's operational activities (see Figure 2 for an organization chart of the office of the Inspector General). Under his direction are two teams (which may be increased to three), each consisting of two experienced investigators: a Director Monitoring and Review, and a Senior Evaluation Review and Monitoring Officer. The Assistant Inspector General (Policy and Standards) is responsible for the development of guidelines and standards for audit/review personnel, the conduct of policy analysis and special studies, the analysis of the results of audit reviews, and the writing of reports. He is supported by two policy analysts: the Senior Advisor

(Policy and Standards), and the Advisor (Policy and Standards). Both Assistant Inspectors General are expected to work closely with their staff. The remaining three positions in the establishment are held by secretaries. It has been proposed that a further audit/review team (comprised of a Director Monitoring and Review, and a Senior Evaluation Review and Monitoring Officer) should be added to the establishment in the future, and this request would probably be treated "sympathetically."<sup>41</sup>

## THE INSPECTOR GENERAL'S REVIEW PROGRAMME

In any given year, the Inspector General's review programme is developed, in consultation with the Review Committee to avoid duplication of effort, toward the production of the next certificate, and is concerned with ensuring the "nitty-gritty compliance" of the Service. Copies of the programme are sent to the Solicitor General and the Deputy Solicitor General so that they may be aware of the Inspector General's plans for the forthcoming year.<sup>42</sup>

Although the *CSIS Act* does not state expressly that the liberties and privacy of Canadians must be protected, within the legislation there is an implicit recognition that the rights of citizens must be observed. In addition to the specific requirements it imposes for obtaining warrants and reporting unlawful conduct, the *CSIS Act* limits the mandate of the Service to collect information to what is "strictly necessary." In addition, the Service can only investigate activities that may "on reasonable grounds be suspected of constituting threats to the security of Canada," such threats being defined by the *CSIS Act*.<sup>43</sup> Furthermore, the Inspector General is required to state in his certificate whether the Service has exercised any of its powers unreasonably or unnecessarily. It is clear, therefore, that "the *CSIS Act* contemplates that the inspector general will review the service's activities with respect to these safeguards." Therefore, Dr. Gosse's intention was "to concentrate on the development and application of guidelines with respect to those safeguards, having particular regard to the Canadian Charter of Rights and Freedoms."<sup>44</sup> To this end, for example, he instigated legal research on the meaning of section 12 of the *CSIS Act* and the term "strictly necessary," and on the meaning of "an unreasonable or unnecessary exercise by the Service of any of its powers."<sup>45</sup> Research has also been carried out on other sections of the *CSIS Act*.<sup>46</sup>

During the 1985-86, his first year of office, Dr. Gosse's efforts were directed toward "gaining an understanding of the Service's activities and establishing the resource capacity to carry out the Inspector General's statutory mandate."<sup>47</sup> The Review Committee's report of June 1985 had to be submitted to Parliament without the benefit of either the annual report of the Director of the CSIS, or the certificate of the Inspector General, as neither were received prior to the Review Committee's statutory deadline of June 30.<sup>48</sup> Undoubtedly, the report from the CSIS was delayed because of the Service's many transitional problems.<sup>49</sup> In late September 1985, however, the report of the Director of the CSIS

having been received by the Inspector General some six weeks before, the certificate was completed and submitted to the Solicitor General.<sup>30</sup> Because of the short period of time that the Inspector General had been in office, all he was able to do was to identify some issues. The certificate was approximately thirty pages with appendices. This first certificate, which covered the period from July 16 to December 31, 1984, was classified as secret.<sup>31</sup>

The second certificate, for the calendar year ending December 31, 1985, was one hundred and six pages in length,<sup>32</sup> and was classified as top secret because it contained the results of reviews of particular operational activities.<sup>33</sup> Although the Inspector General stated that he "was generally satisfied that the investigative authorization process was being carried out reasonably and well," he felt unable to certify compliance with the *CSIS Act* or with the directions of the Solicitor General because a lack of staff had prevented him from making a thorough audit.<sup>34</sup> The Inspector General also felt, as did the Review Committee, that the report by the Director of the CSIS was of limited usefulness in terms of the review process, and stated that "Even if it did contain a mass of information about the CSIS's operational activities, it would be necessary to go behind the report and examine files and conduct interviews in appropriate cases."<sup>35</sup>

Svend J. Robinson of the Standing Committee on Justice and Solicitor General thought the fact that the Inspector General "was not in a position to certify compliance with the act because of staff shortages" was a "very serious matter." Therefore, the Standing Committee decided that Dr. Gosse should be called before them to explain the situation.<sup>36</sup> Although no relationship between the Inspector General and Parliament was established by the *CSIS Act*, the former is "subject to the parliamentary committee process in whatever manner and to whatever extent are appropriate."<sup>37</sup> Therefore, despite his accountability to the Deputy Solicitor General and the Minister, the Inspector General was obliged to appear as a witness. As a result of this, Dr. Gosse has speculated that the Justice Committee could alter the accountability process as set out in the *CSIS Act*. That is, it is possible that the Standing Committee on Justice and Solicitor General, and its counterpart in the Senate, could become an increasingly important third level of review for the activities of the CSIS.<sup>38</sup>

The Inspector General's certificate in 1987 (for the calendar year 1986) was classified as top secret, and was two hundred and seventy pages in length. It focused on various operations, and examined the targeting process,<sup>39</sup> which had also been reviewed by the Inspector General for the calendar year 1985:

The Inspector General found that the CSIS targeting process—under which individuals and organizations that are or may be conducting activities constituting threats to the security of Canada are investigated—appears to be functioning well, with due regard to the rights and liberties of those Canadian residents affected. [The Review Committee] concur with this finding. In

particular, the centralized approval system within CSIS, the various levels of investigation that can be authorized, the length of time of such authorizations, and the nature of information required to be placed before the centralizing approving body all leave us and the Inspector General with the general impression that CSIS carries out the targeting process responsibly and well. The Inspector General has suggested some specific improvements, related to the quality and clarity of reports and the role of legal counsel in making targeting decisions. We concur with his suggestion.<sup>60</sup>

In his observation of CSIS operations, the Inspector General has no explicit criteria beyond the wording of the *CSIS Act* to guide him. He must judge for himself whether the Service is doing anything it should not be doing. For example, he might decide that the CSIS is utilizing too many sources, or too high a level of intrusiveness. However, no matter what his resources may be, the certificates produced by the Inspector General "will always have to be limited and qualified to some extent. It would be impossible in practical terms to conduct a full audit of all the service's operational activities each year." But, he can carry out "a well planned, selective audit review program that will be comprehensive over an acceptable period of time."<sup>61</sup>

Therefore, in his certificate the Inspector General may choose to review one category of activity and examine it in detail. For instance, with regard to the issuing of warrants for electronic surveillance (for example, wiretaps), a judge of the Federal Court of Canada reviews the necessity for their issue. However, there is less control once a warrant has been granted. Obviously, an audit of the Atwal warrant application by the Inspector General might have detected the inaccuracies in the supporting affidavit.<sup>62</sup> So, perhaps the Inspector General might decide to examine whether the conditions under which a warrant was granted were faithfully carried out by the CSIS. For example, a judge or the Solicitor General may impose certain conditions when a warrant is granted, and the Inspector General could investigate whether the Service complied with those conditions and, if a listening device was installed, whether it was deployed in the proper way.<sup>63</sup> It should be noted that it is harder for the Service to obtain a warrant under the *CSIS Act* than for the police to do so under the Criminal Code, as permission of the Solicitor General is not required in the latter case. Therefore, although the police have a higher standard to satisfy in that the information they obtain may lead to prosecutions, the CSIS—primarily concerned with collecting intelligence—must submit to even more control because of Canadian sensitivities to their operations.

Some examples of investigations by the Inspector General may help to illustrate his internal review function. In early 1986, the Inspector General decided to review the use of Canada's official languages in obtaining warrants under the *CSIS Act* in the Quebec Region during 1985. The examination was intended to discover whether there were any undue

delays caused by a lack of bilingual capacity. The conclusion of the study was that warrants were not delayed for this reason, although there were delays in translating certain documents after warrants were issued. The perceived problems in Quebec relating to warrants developed because of the failure of some personnel in Montreal to comprehend the process set forth in the *CSIS Act* for obtaining warrants. The Inspector General also found insufficient communication between CSIS headquarters in Ottawa and its office in Montreal with respect to nonlinguistic problems associated with the preparation of warrant applications. Thereafter, the CSIS addressed themselves to trying to solve these problems.<sup>64</sup>

In early 1987, in order to observe regional operations, the Inspector General toured CSIS establishments in Canada, spending three days in each region. In the future, more staff will be used to visit these regions regularly. However, a large proportion of the Service's "paperwork" is centralised, and a majority of operational reviews can be conducted successfully in Ottawa.<sup>65</sup> In 1987, the Inspector General also decided to examine the collection of information under "basket clauses" in warrants. Basket clauses "allow intrusive powers to be used at the same location against unnamed associates of the target, who may be identified only after the warrant is granted." The Review Committee also decided to examine the question of basket clauses.<sup>66</sup>

The Inspector General, besides his investigative role, may also use his certificate to point out ways of improving the Service. For example, in his certificate for 1985, he advocated closer contact between CSIS analysts and External Affairs officials in order to facilitate a greater direct interchange of information and points of view.<sup>67</sup> This is not a primary function of the Inspector General, however, and arises incidentally to his other tasks.<sup>68</sup> That is, in the first instance, the Inspector General is mainly concerned with the propriety, rather than the efficacy, of the Service.

Although some of the Inspector General's reviews are of his own choosing, frequently the subject and direction of the investigations carried out are decided by others. For example, in October 1985 the Inspector General was directed by the Review Committee to review the Service's role in providing security assessments and advice pursuant to section 13 of the *CSIS Act*. For this purpose a special team was established, with people seconded from several government agencies.<sup>69</sup> Thereafter, when Solicitor General James Kelleher made a formal request to the Review Committee in September 1986 to review "the whole security screening process," it enlisted the help of the Inspector General.<sup>70</sup> The Review Committee submitted its report to the Solicitor General in January 1988.<sup>71</sup> The Inspector General may also receive a request from the Solicitor General to conduct an investigation. For example, the Inspector General was asked to investigate the Atwal warrant affair, and the case of Malikat Singh Sidhu, the Punjabi Planning Minister who was shot and wounded during a visit to Vancouver Island in 1987, despite the prior knowledge of a CSIS agent of the assassination plot.<sup>72</sup> Also, following the Boivin affair in 1987,<sup>73</sup> the Inspector General was



requested to produce a report for the Minister on the CSIS's use of Boivin and on human sources that had been inherited from the RCMP Security Service. Simultaneously, he was directed by the Review Committee to investigate the use of Boivin by the CSIS, as well as CSIS human sources specifically within labour organizations. By agreement, copies of the final reports were to be sent to both the Solicitor General and the Review Committee.<sup>74</sup>

### **THE INSPECTOR GENERAL AND LIAISON WITH THE CSIS**

In the course of its regular investigations, the Inspector General's requests, and those made by the Review Committee, have imposed "a significant workload" upon the CSIS. The Service, however, has generally been cooperative in providing information as requested, and in arranging meetings between the Inspector General and staff from the Service.<sup>75</sup>

In order to facilitate matters, a branch exists within the CSIS to respond to the enquiries of the Inspector General and the Review Committee. It was created between the establishment of the Service in July 1984 and the formation of the Review Committee in November of that year.<sup>76</sup> The Chief, External Review and Liaison, is the head of an expanding part of the CSIS as the demands placed upon the Service by the respective review bodies have steadily increased. Therefore, the CSIS interfaces with the Inspector General and the Review Committee through the Chief's branch. The Chief is also concerned with rationalising the demands made upon CSIS staff, and hence attempts to reduce the overlap that may occur between investigations conducted by the Review Committee and the Inspector General. He also deals with complaints made by the public against the Service.<sup>77</sup>

### **COMPARATIVE ANALYSIS**

The office of Inspector General is not unique to Canada. An examination of the experience of inspectors general in other countries provides alternative models by which the functioning of the Canadian institution may be compared.

In the United States, for example, there are inspectors general in the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), the Air Force Intelligence Service (AFIS), the Air Force Electronic Security Command (AFESC), and the Air Force Technical Applications Center (AFTAC).<sup>78</sup> Their powers and functions, however, differ from that of the Inspector General in Canada.<sup>79</sup> For example, within the Central Intelligence Agency, the Inspector General has an internal oversight function, and reports directly to the Director of Central Intelligence (DCI). The Inspector General, like the CIA general counsel, is concerned that operations are conducted within the law, but he is also concerned with the agency's level of performance. Periodic inspections are made by the Inspector General of CIA offices with respect to both their effectiveness and their observation of regulations. Although under certain conditions he can be denied access to CIA facilities, this may be

done only by the DCI. His office also acts as a forum for grievances by CIA staff. Unfortunately, it "is likely that illegal activities and other intelligence shortcomings will occasionally escape the inspector general's attention." Despite such failures, and although he has "never influenced 'high policy'," it is believed that the Inspector General has played a "positive role" within the intelligence community of the United States.<sup>10</sup>

The recent Iran-Contra investigation revealed that the CIA's Inspector General, William Donnelly, "lacked the manpower, resources and tenacity" to uncover the various abuses of the agency's role. Therefore, pressure has mounted for an independent inspector general, similar to those found in other federal departments and agencies. This was formally proposed in a bill by Senator Arlen Specter (R-Pa.), but the CIA Director, William H. Webster, argued before the Senate Select Committee on Intelligence that such a development would "actually prove to be counterproductive to an effective inspection and investigation process." Webster felt that the presence of an independent inspector general with access to secret records could deter foreign intelligence services and other sensitive sources from sharing information with the CIA, as they might fear disclosure. However, Senator Specter, a member of the Intelligence Committee, pointed out that both the Defense and State Departments have independent investigators in their bureaucracies. An important debate is now taking place in the United States about the role of the inspector general.<sup>11</sup>

There are, therefore, fundamental differences between the Canadian and current American models. The American inspector general reports to the executive head of the security/intelligence agency concerned, providing a different channel of information from regular line management. In Canada, the Inspector General is not responsible to the Director of the CSIS, but rather to the Solicitor General who has political responsibility for the Service. Also, the Canadian Inspector General has not been tasked to consider the grievances of individual staff members of the Service, as other procedures are already in existence for this purpose. Furthermore, the role of the American inspector general in monitoring the level of performance of the intelligence agency is not a function that was specifically envisaged in the *CSIS Act* for his Canadian counterpart.<sup>12</sup>

The Canadian experience with regard to the Inspector General may be of some relevance and importance as a model to be emulated in the political control of security and intelligence agencies in other countries, for example, in Great Britain. In early 1989, the British Parliament passed the *Security Service Bill*, placing the Security Service (otherwise known as MI5) on a statutory basis. However, the government avoided establishing mechanisms similar to those in Canada, Australia or the United States. There was marked opposition to this omission<sup>13</sup> and, in the future, pressure will undoubtedly increase for improved accountability of both the Service and other intelligence agencies. Therefore, perhaps consideration should be given by the British government to the internal review mechanism afforded by inspectors general, especially as more

radical solutions may be introduced under a different government which may prove to be less desirable.

In order to function effectively, the Inspector General must be credible in the eyes of the public and Parliament. This state of affairs is not automatically established with the formal creation of the office, but must be earned gradually. The Inspector General must be committed to the democratic process in order to fulfil his role, and the expectations of both legislators and public.<sup>84</sup> Therefore, countries that wish to adopt the model of the Canadian Inspector General must find candidates that are not only capable of meeting the demands of the work, but also the expectations of others. Following the resignation of Dr. Gosse on December 27, 1987,<sup>85</sup> to take up the appointment of Chairman of the new RCMP Public Complaints Commission, Canada also sought such a candidate. Richard Thompson, Q.C., was appointed, and took up the position in July 1988.<sup>86</sup>

## **CONCLUSION**

Since its inception, the office of the Inspector General has proven to be an excellent means by which to review the ongoing activities of the CSIS, and for ensuring that the powers available to the Service are not misused. Other liberal democratic countries might well consider emulating the Canadian model.

As it is an ongoing review mechanism within the Department of the Solicitor General, the office has enabled the Minister to be kept reliably informed, so that he can effectively control the CSIS and, being accountable for the Service, also discharge his responsibilities to parliament. When taken in conjunction with the external review mechanism provided by the Review Committee, the present system offers a high degree of control without adversely affecting the functioning of the Service.

Therefore, by the time that the *CSIS Act* is reviewed in 1989,<sup>87</sup> the Inspector General should be seen as an important means of internal review of the CSIS. Parliament ought to be made aware of the role and functions of the office of the Inspector General, and its proven record, in order that it may be confirmed with a broad consensus as an effective and desirable institution within the Canadian political system. Whether Inspectors General should review other agencies within the intelligence community should then be for an informed parliament to decide.

Figure 1: Organization of the Secretariat, Solicitor General of Canada, Showing the Relationship Between the Inspector General of the CSIS, the Solicitor General, and the Deputy Solicitor General

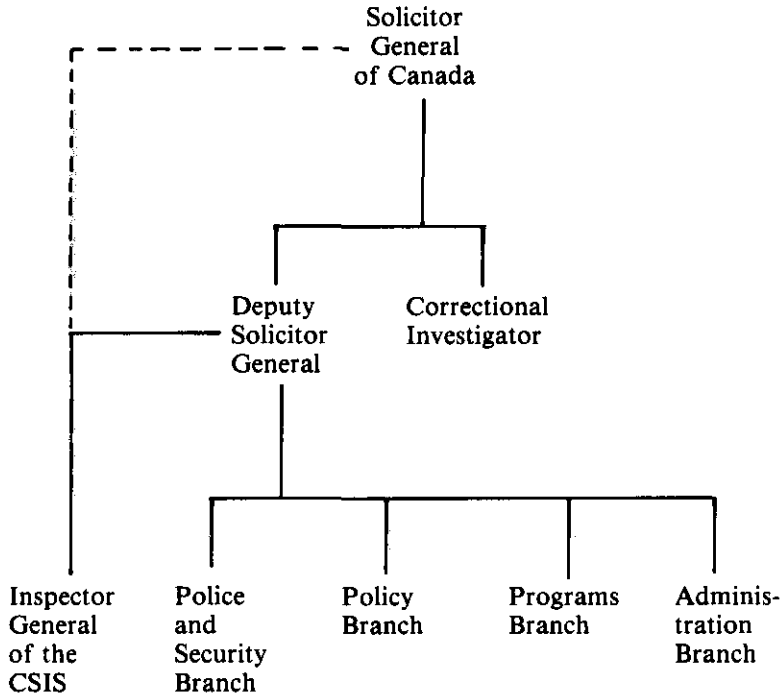
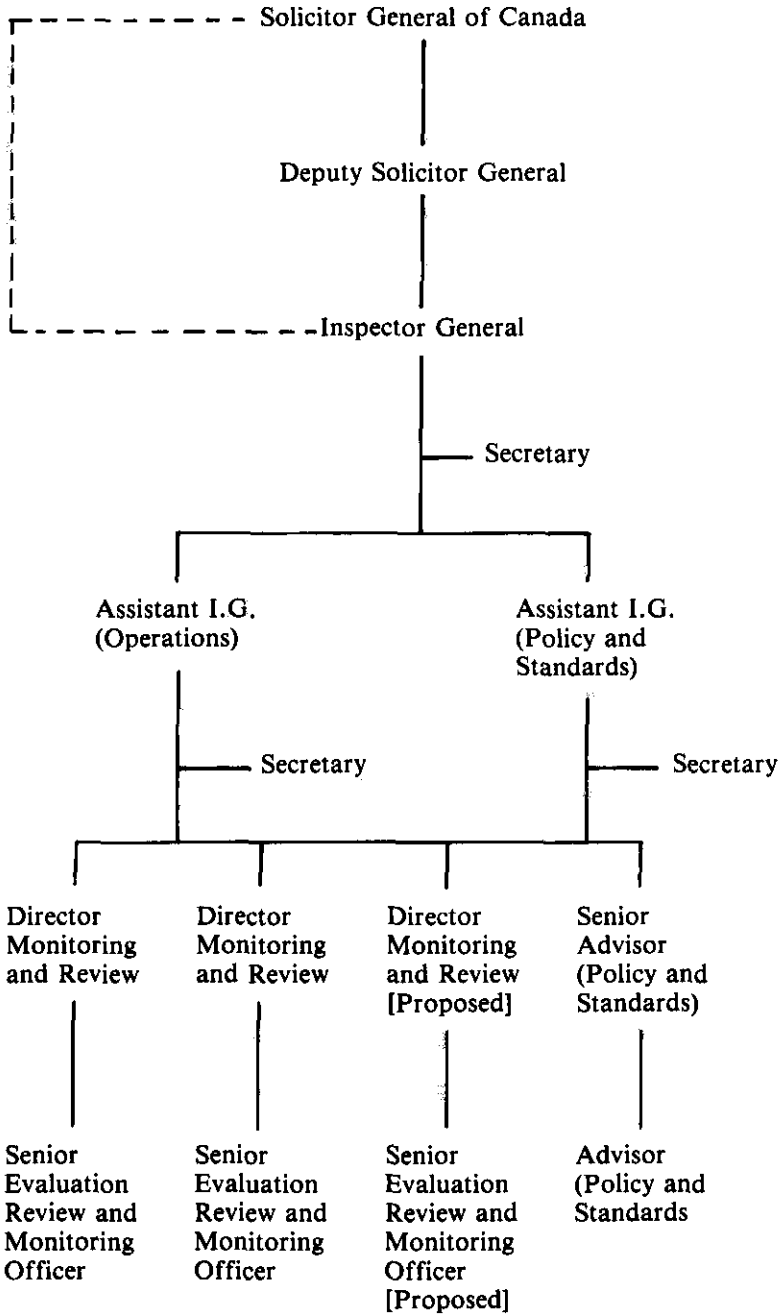


Figure 2: Office of the Inspector General of the CSIS



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### Endnotes

1. For a recent survey, see Jeffrey T. Richelson, *Foreign Intelligence Organizations* (Cambridge, Massachusetts: Ballinger Publishing Company, 1988), pp. 67-99.
2. Examples of articles which give some consideration to the Inspector General include: Murray Rankin, "National Security: Information, Accountability, and the Canadian Security Intelligence Service," *University of Toronto Law Journal*, vol. 36 (1986), pp. 249-85, and Geoffrey R. Weller, "The Canadian Security Intelligence Service under stress," *Canadian Public Administration*, vol. 31, no. 2 (Summer 1988), pp. 279-302.
3. Canada, *Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police; Second Report — Volume 2; Freedom and Security Under the Law* [McDonald Commission] (Ottawa: Supply and Services Canada, August 1981), p. 1089.
4. Daniel Cayley Chung, "Internal Security: Establishment of a Canadian Security Intelligence Service," *Harvard International Law Review*, vol. 26, no. 1 (Winter 1985), p. 237.
5. For example, testimony by Dr. M.A.J. Tugwell and Dr. D. Charters of the Centre for Conflict Studies, University of New Brunswick, before the Committee on September 15, 1983, in *Proceedings of the Special Committee of the Senate*, Issue no. 9.
6. Canada, Senate, *Delicate Balance: A Security Intelligence Service in a Democratic Society; Report of the Special Committee of the Senate on the Canadian Security Intelligence Service* [Pitfield Committee] (Ottawa: Supply and Services Canada, November 1983), p. 30 [Minutes of Proceedings, p. 3337].
7. *Ibid.*
8. The Pitfield Committee noted that while the Inspector General would be granted "very broad access" to information under the control of the Service, and would be allowed "to require reports and explanations from the Director on operational matters," confidences of the Queen's Privy Council for Canada were to be withheld. They argued that "If any cabinet documents relating to operations are in the control of the CSIS, the Inspector General should have access to them"; *ibid.* In the legislation as finally passed, however, access to cabinet documents in the possession of the CSIS was denied to both the Inspector General and the Review Committee; *CSIS Act*, section 31 (2) and section 39 (3), respectively.
9. Dr. R.H. Roy, "The Security Intelligence Review Committee: The Output," paper prepared for the Security Intelligence Review Committee's Research Seminar "Canadian Security Intelligence in the 80's," Meech Lake, Ottawa, October 11, 1985, p. 15.
10. Flora MacDonald, for example, argued that the Inspector General would be "a watchdog without teeth"; Canada, House of Commons, *Debates* (February 13, 1984), p. 1323. This concern was echoed by Mr. Kilgour and Mr. Jarvis; *ibid.*, p. 1326 and *ibid.* (March 9, 1984), p. 1956 respectively. For other references to the Inspector General in the debate prior to the passage of the *CSIS Act*, see *ibid.*, (February 10, 1984), pp. 1274-75; (March 9, 1984), pp. 1958-59; (June 12, 1984), p. 4596; (June 13, 1984), p. 4644; (June 20, 1984), pp. 4875-80; (June 21, 1984), pp. 4999 and 5056.
11. Canada, Department of Consumer and Corporate Affairs, Registration Division, copy of the Proclamation of the *CSIS Act* of July 18, 1984 (Ottawa, July 18, 1984). Useful articles from this period dealing with the passage of the CSIS legislation and the issues

- involved are: C.E.S. Franks, "Parliamentary Control of Security Activities," *McGill Law Journal*, vol. 29, no. 2 (March 1984), pp. 326-39; and C.E.S. Franks, "The Political Control of Security Activities," *Queen's Quarterly*, vol. 91, no. 3 (Autumn 1984), pp. 565-77.
12. The office of the Inspector General of the CSIS was added to the list of investigative bodies for the purposes of paragraph 8 (2) (e) of the *Privacy Act*; Canada, Privy Council Office, Order in Council 130, January 16, 1986. It was also added to the list of "Other Government Institutions" in the schedule to the Act; *ibid.*, Order in Council 128, January 16, 1986. Other amendments provided for the designation of the Solicitor General as head of the institution for the purposes of both the *Privacy Act* and for the *Access to Information Act*; *ibid.*, Order in Council 131, January 16, 1986, and *ibid.*, Order in Council 132, January 16, 1986, respectively.
  13. Robert J. Jackson, Doreen Jackson and Nicolas Baxter-Moore, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy* (Scarborough, Ontario: Prentice-Hall Canada Inc., 1986), p. 379.
  14. *CSIS Act*, section 30 (2) (a).
  15. *Ibid.*, section 30 (2) (b).
  16. *Ibid.*, section 30 (2) (c). The certificates are submitted pursuant to section 33 (2), and discussed in more detail below.
  17. *Ibid.*, section 30 (1).
  18. *Ibid.*, section 31 (1).
  19. See note 8, above.
  20. Gerry Cummings, Chief, Public and Ministerial Affairs, CSIS, to author, September 18, 1987. The Review Committee, in turn, has access to any information under the control of the Inspector General that relates to the performance of the duties and functions of the Review Committee; *CSIS Act*, section 39 (2). However, the formal exercise of this power has not been necessary because of the close cooperation that exists between the Inspector General and the Review Committee. To help ensure the smooth interchange of information, the Chairman of the Review Committee meets from time to time with the Inspector General; SIRC, *Annual Report, 1986-87* (Ottawa: Supply and Services Canada, 1987), p. 8. However, the Inspector General probably has more frequent contact with Maurice Archdeacon, the Executive Secretary of the Review Committee, as the latter is employed on a full-time basis in Ottawa, and is therefore readily accessible. Staff from the office of the Inspector General also meet regularly with the staff of the Review Committee; interview with Dr. Richard F. Gosse, Chairman, RCMP Public Complaints Commission, and former Inspector General of the CSIS, Hull, Quebec, February 22, 1988.
  21. *CSIS Act*, section 32.
  22. *Ibid.*, section 33 (1).
  23. *Ibid.*, section 33 (2) (a).
  24. *Ibid.*, section 30 (2) (b). Although the Inspector General is responsible to the Deputy Minister, his functions are imposed on him by the *CSIS Act*, which requires him to submit his certificates to the Minister. Accordingly, the Deputy Minister leaves the Inspector General to decide how he may best carry out his statutory obligations. The Inspector General, therefore, submits his certificates directly to the Minister; interview with R.F. Gosse, *Inspector General of the CSIS, Ottawa, November 5, 1987. In practice*, when the Inspector General submits his certificate to the Solicitor General, he also sends a copy to the Deputy Solicitor General in order that the latter can advise the Minister on its contents; R.F. Gosse interview, February 22, 1988.
  25. *CSIS Act*, section 33 (3).
  26. SIRC, *Annual Report, 1984-85* (Ottawa: Supply and Services Canada, 1985), p. 4.
  27. SIRC, *Annual Report, 1985-86* (Ottawa: Supply and Services Canada, 1986), p. 1.
  28. Members of the Review Committee examine the Inspector General's certificate, and utilize it in the annual report which they are preparing; interview with Jean-Jacques Blais, member of the SIRC, Ottawa, November 2, 1987.

29. Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Solicitor General*, Issue No. 2, November 20, 1986, p. 11; *CSIS Act*, section 53.
30. Section 53 of the *CSIS Act* now reads: "The Review Committee shall, not later than September 30 in each fiscal year, submit to the Minister a report of the activities of the Committee during the preceding fiscal year and the Minister shall cause each such report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it"; Canada, House of Commons, *Bill C-104* [as passed by the House of Commons on January 22, 1988], p. 5.
31. *CSIS Act*, section 40 (a). While the Review Committee can, and has, directed the Inspector General to conduct reviews, there is nothing in the *CSIS Act* expressly enabling the Minister to request or order the Inspector General to carry out reviews. In the past, however, the Minister has written to the Inspector General requesting that he conduct investigations. This happened in the cases of the Atwal warrant and the Boivin affair. For a brief summary of these two cases see, for example, Hilary Mackenzie with Deborra Schug, "Spies Under Fire," *Maclean's*, vol. 100, no. 39 (September 28, 1987), pp. 12-14, and notes 62 and 73 below.
32. SIRC, *Annual Report, 1984-85*, p. 4.
33. Canada, Solicitor General of Canada, *Solicitor General Annual Report 1985-1986* (Ottawa: Supply and Services Canada, 1987), p. 13.
34. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, pp. 14-15. It is, of course, very difficult for the Canadian public to judge the worth of the office, while what the Inspector General does and how well he does it are not widely known.
35. Canada, Privy Council Office, Order in Council 562, February 15, 1985. Dr. Gosse's appointment was made public by the press the following day. See, for example, Canadian Press, "MacKay names watchdog for new security service," *Globe and Mail* (February 16, 1985), p. 12; *ibid.*, "Saskatchewan official named security agency watchdog," *Winnipeg Free Press* (February 16, 1985), p. 10; and *ibid.*, "Security service watchdog named," *Calgary Herald* (February 16, 1985), p. A3. His appointment also was mentioned in Parliament; Canada, House of Commons, *Debates* (February 28, 1985), p. 2628. Biographical details of Dr. Gosse may be found in Canada, Solicitor General of Canada, "Inspector General of CSIS Appointed," PR/13, February 15, 1985; *ibid.*, "Richard Fraser Gosse," undated.
36. Provinces across Canada fought aspects of the legislation and Saskatchewan, with a large RCMP training establishment in Regina, was particularly outspoken. The RCMP in Saskatchewan is highly regarded and, at the time, a large majority of people expressed themselves as highly satisfied or satisfied with the force. There was less opposition from those provinces where the RCMP presence is less marked because of the presence of a provincial police force, as in Ontario and Quebec; R.F. Gosse interview, November 5, 1987.
37. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 18.
38. R.F. Gosse interview, February 22, 1988.
39. Canada, Inspector General of the CSIS, "Speaking Notes for the Preliminary Statement of Dr. Richard Gosse, Q.C., the Inspector General of the Canadian Security Intelligence Service Appearing Before the Standing Committee on Justice and Solicitor General of the House of Commons on December 11, 1986," p. 9. Because most of the staff lacked experience in security-intelligence matters, orientation and training also had to be arranged before they were able to commence their duties; *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 19.
40. The Inspector General's reliance upon the department raises the question of his independence of action. Weller, for example, noted that it would be possible for the government to impede the Inspector General by means of budgetary restrictions, by giving extraneous tasks and other such actions, but that "there is no indication that the office of inspector general has been hampered in such a fashion"; Weller, "The



- Canadian Security Intelligence Service under stress," p. 296. Dr. Gosse found that the best means of obtaining resources, and of pursuing his goals, was through cooperation with the Deputy Solicitor General; R.F. Gosse interview, November 5, 1987.
41. Canada, Solicitor General of Canada, "Office of the Inspector General" [organisation chart], undated; *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, pp. 18-19.
  42. R.F. Gosse interview, February 22, 1988.
  43. *CSIS Act*, section 2. According to this section, threats to the security of Canada "does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d)."
  44. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 17.
  45. R.F. Gosse interview, November 5, 1987.
  46. *Ibid.*, February 22, 1988.
  47. *Solicitor General Annual Report 1985-1986*, p. 14.
  48. SIRC, *Annual Report, 1984-85*, p. 1.
  49. R.F. Gosse interview, February 22, 1988.
  50. *Solicitor General Annual Report 1985-1986*, p. 14.
  51. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 15.
  52. *Ibid.*, p. 18.
  53. *Ibid.*, p. 15.
  54. SIRC, *Annual Report, 1985-86*, p. 27. The annual report of the Solicitor General avoided talking of staff shortages by stating that the certificate was limited in scope because "the resource capacity for conducting comprehensive operational reviews and audits had not yet been established"; *Solicitor General Annual Report 1985-1986*, p. 14.
  55. SIRC, *Annual Report, 1985-86*, p. 27. The Director of the Service, however, must report to the Minister any acts performed by his employees that he thinks may be unlawful. The Attorney General of Canada and the Review Committee also receive copies of the report in due course, although there is no statutory obligation for the Inspector General to be informed; *CSIS Act*, section 20 (2) to section 20 (4). However, by an exchange of correspondence, the CSIS agreed to inform both the Minister and the Inspector General and, in practice, the Service does this "very quickly"; R.F. Gosse interview, February 22, 1988.
  56. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 2, November 20, 1986, pp. 19-20.
  57. *Ibid.*, Issue No. 4, December 11, 1986, p. 14.
  58. *Ibid.*, p. 16. For example, the Inspector General examined the Boivin affair, and Solicitor General James Kelleher was asked about the investigation. Kelleher stated that "I did not carry out the investigation with the Inspector General and I have not personally reviewed the reports the Inspector General did. I can only tell you what I am advised by him"; *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 27, December 1, 1987, p. 12. Therefore, the Solicitor General was directed by Robinson to report back to the Standing Committee with an answer; *ibid.*, p. 13. Members of the intelligence community have appeared already before at least one Senate committee; see Canada, Senate, *The Report of the Senate Special Committee on Terrorism and the Public Safety* [Kelly Report] (Ottawa: Supply and Services Canada, June 1987), Appendix A, "List of persons who appeared before the Committee", pp. 117-26.
  59. R.F. Gosse interview, November 5, 1987.
  60. SIRC, *Annual Report, 1985-86*, p. 5. The targeting process is likely to remain a concern of the Inspector General in the future, as it is a sensitive area directly affecting the civil liberties of Canadians; R.F. Gosse interview, February 22, 1988.

61. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 18.
62. Harjit Singh Atwal was charged along with other Sikhs in British Columbia with conspiracy to murder a Punjabi cabinet minister on Vancouver Island. However, the case could not proceed because of errors in the affidavits filed by the CSIS to obtain the wiretap that led to the arrest of the men.
63. R.F. Gosse interview, February 22, 1988.
64. SIRC, *Annual Report, 1985-86*, p. 14. Although the Inspector General found that problems with warrant applications were not associated with a lack of bilingual personnel among CSIS staff in Ottawa, there were linguistic-cultural problems within the Service. Therefore, at the request of the Solicitor General, the Review Committee conducted an inquiry. This showed that the CSIS "too often acted like an essentially Anglophone institution with French-language capability as a troublesome frill"; *ibid.*, *Closing the Gaps; Official Languages and Staff Relations in the Canadian Security Intelligence Service* (Ottawa: Supply and Services Canada, 1987), p. 1.
65. The Inspector General has also visited the United States and Great Britain in order to familiarize himself with relevant problems faced by their security-intelligence agencies and their oversight. Furthermore, he monitors the activities of CSIS liaison personnel attached to Canadian Embassies abroad; R.F. Gosse interview, November 5, 1987.
66. SIRC, *Annual Report, 1986-87*, p. 10.
67. SIRC, *Annual Report, 1985-86*, p. 26.
68. Interview with Michael de Rosenroll, Assistant Inspector General (Policy and Standards), and Acting Inspector General of the CSIS, Ottawa, March 3, 1988.
69. *Solicitor General Annual Report 1985-1986*, p. 14. The review was carried out over a six-month period by a 3½ person team, comprised of people seconded from the Auditor General, the RCMP, the Public Service Commission, and the loan of a person on a half-time basis from the Review Committee; *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, p. 19. This system could be used again if staffing levels at the office of the Inspector General were temporarily inadequate; R.F. Gosse interview, February 22, 1988.
70. Similarly, because of his knowledge of security-intelligence matters, the Inspector General was interviewed by the investigative team led by Gordon Osbaldeston; Canada, Solicitor General of Canada, *People and Process in Transition; Report to the Solicitor General by the Independent Advisory Team on the Canadian Security Intelligence Service* [Osbaldeston Report] (Ottawa: Supply and Services Canada, 1987), Appendix B, "List of People Interviewed," p. 3. For a brief summary of the report, see *ibid.*, "Report of the Independent Advisory Team on CSIS; Highlights and Summary," November 1987. See also, Hilary Mackenzie, "Reining in the spies," *Maclean's*, vol. 100, no. 50 (December 14, 1987), p. 19.
71. "Kelleher gets security screening report," *Globe and Mail*, January 19, 1988, p. A4.
72. See, for example, Neil Macdonald, "Spy agency kept Indian minister's visit secret from RCMP," *Ottawa Citizen* (September 15, 1987), pp. A1-A2.
73. Marc Boivin was a former trade union official in Quebec who acted as a paid informer for the CSIS, but who was also found guilty of conspiracy to cause explosions. In the case of Boivin, the Inspector General was also directed by the Review Committee to conduct a review.
74. R.F. Gosse interview, February 22, 1988.
75. *Minutes of . . . Standing Committee on Justice and Solicitor General*, Issue No. 4, December 11, 1986, pp. 19-20.
76. Ronald George Atkey, P.C., Q.C., was appointed Chairman of the Review Committee by Order in Council 3875 of November 30, 1984. The other members of the Review Committee—Jean-Jacques Blais, P.C., Q.C. (nominee of the Liberal Party), Saul M. Cherniack, P.C., Q.C. (nominee of the NDP), Paule Gauthier, P.C., and Frank Charles McGee, P.C.—were appointed by Order in Council 3876 on the same day. Since the Osbaldeston Report, External Review and Liaison forms part of the Secretariat at the CSIS; telephone interview with the Chief, External Review and Liaison, CSIS, May 25, 1988.

77. Interview with the Chief, External Review and Liaison, Ottawa, March 15, 1988.
78. See the organization charts in Jeffrey T. Richelson, *The U.S. Intelligence Community* (Cambridge, Massachusetts: Ballinger Publishing Company, 1985), pp. 22, 38, 51, 54, and 59 respectively. In the United States, inspectors general exist in nineteen federal departments and agencies. For an assessment of their worth, see Mark H. Moore and Margaret Jane Gates, *Inspectors-General; Junkyard Dogs or Man's Best Friend?* [Social Research Perspectives: Occasional Reports on Current Topics; 13] (New York: Russell Sage Foundation, 1986). Although the Federal Bureau of Investigation performs functions closest to those of the CSIS, it does not have an inspector general.
79. Weller has compared legislative oversight mechanisms in Canada and the United States, but not the processes of internal review provided by inspectors general; Geoffrey R. Weller, "Legislative Oversight of Intelligence Services in Canada and the United States," paper presented at the 1985 annual meeting of the American Political Science Association, New Orleans, August 29-September 1, 1985. For an account of the Senate's attempts to develop a legal framework to enforce the accountability of intelligence agencies, see Loch K. Johnson, "Legislative Reform of Intelligence Policy," *Polity*, vol. 17, no. 3 (Spring 1985), pp. 549-73.
80. Walter Laqueur, *A World of Secrets: The Uses and Limits of Intelligence* (New York: Basic Books, Inc., 1985), p. 337. The practices and procedures employed by inspectors general are governed by the President's Intelligence Oversight Board (PIOB); Mark M. Lowenthal, *U.S. Intelligence; Evolution and Anatomy* [The Washington Papers/105] (New York: Praeger, 1984), p. 111.
81. "CIA Objects to Outside Watchdog; Webster Calls Plan 'Counterproductive,'" *Washington Post* (March 2, 1988), p. A13.
82. A comparison also may be made between the Canadian model of the Inspector General established by the *CSIS Act*, and the Australian inspector general; see Australia, *Report on the Australian Security Intelligence Organization* [Hope Royal Commission] (Canberra: Australian Government Publishing Service, 1985), pp. 328-35; *Inspector-General of Intelligence and Security Act 1986* [No. 101 of 1986] (Canberra, 1986); and *Australian Security Intelligence Organization Amendment Act 1986* [No. 122 of 1986], section 4, p. 4 (Canberra, 1986). N.D. McInnes, the Australian Inspector-General of Intelligence and Security, recently submitted his first annual report: *Inspector-General of Intelligence and Security; Annual Report 1986-87* (September 1987). Contact with his Australian counterpart was initiated by the Canadian Inspector General; R.F. Gosse interview, November 5, 1987.
83. See, for example, National Council for Civil Liberties, "Report on Security Service Bill," London, December 1988.
84. A symbol of this commitment is the support given by both the Inspector General and the Review Committee to the "Conference on Advocacy, Protest and Dissent," which was held at Queen's University in February 1988; M. de Rosenroll interview, March 3, 1988.
85. Philip Rosen, "The Canadian Security Intelligence Service," *Current Issue Review*, 84-27E (Ottawa: Research Branch, Library of Parliament, September 18, 1984, reviewed January 6, 1988), p. 14.
86. Dr. Gosse commenced his new employment on February 1, 1988; Canada, Solicitor General of Canada, "Richard Gosse Appointed Chairman of RCMP Public Complaints Commission," News Release, December 21, 1987. The Public Complaints Commission, created by amendments to the *RCMP Act* in 1986, is intended to give Canadians an independent body to investigate and review complaints that they may have about alleged improper or unlawful conduct by members of the force. Until Thompson was appointed, Michael de Rosenroll was the Acting Inspector General; Richard Gosse to author, February 4, 1988.
87. *CSIS Act*, section 69. The Inspector General will assist the Minister and the Deputy Minister, as required, to prepare for the Parliamentary review; M. de Rosenroll to author, May 6, 1988.