

Change and Development in the New Zealand Security and Intelligence Services

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INTRODUCTION

Many people, including many New Zealanders, have wondered why a small nation so far removed from the major populated parts of the world and from the world's trouble spots needs security and intelligence services. The answer is that all countries have some need to keep certain matters secret and to acquire secret information for their own self-protection. This is certainly true of those nations, like New Zealand, that are part of defensive alliances and which receive secrets from other nations by virtue of being in those alliances. Even a small, relatively geographically remote, nation like New Zealand has had spies operating within it, has had suspected traitors and has experienced terrorist incidents. Moreover, all governments are wise to have agencies that are able to resort to secret sources that can advise them on threats to the nation. However, there are many New Zealanders who do not accept such an answer and there have been repeated calls over recent decades for the intelligence agencies to be disbanded.

If it is accepted that even a small nation needs intelligence agencies, the major questions then become exactly the same two that need to be asked in larger nations. First, whether or not the nation has a mix of agencies that is effective at warning government. Second, whether or not the agencies are held properly accountable and are not themselves likely to become a danger to the very system that they are intended to protect. Over the years both of these questions have repeatedly been asked in New Zealand and, as a consequence, many changes have been made to try and ensure both effectiveness and accountability. This article assesses the changes and developments to see whether or not they have produced satisfactory results. It begins by surveying the nature and extent of the present New Zealand security and intelligence community. It then looks at the early history of the community before analyzing some of the problems that it ran into in the 1970s. This is followed by an analysis of the changing extent, roles and functions of the community and of the steady development of greater accountability. The article concludes with an assessment of the current situation in New Zealand.

THE NEW ZEALAND INTELLIGENCE COMMUNITY

The New Zealand intelligence community is more extensive than many New Zealanders realize. This is not particularly surprising since not much information about it has been made public. New Zealand has a security intelligence agency, a signals intelligence agency and a defence intelligence agency. However, like Canada, it does not have an intelligence agency intended to gather secret intelligence abroad using human sources. That is, it has no equivalent of the British Secret Intelligence Service (SIS), the Australian Secret Intelligence Service (ASIS) or the American Central Intelligence Agency (CIA).

The agency that has received the most public attention over the years has been the New Zealand Security Intelligence Service (NZSIS). It was founded by Order-in-Council in 1956 with the name of the New Zealand Security Service. It was provided with a legislative base and a new name in 1969 when the *New Zealand Security Intelligence Service Act* was passed. It began with a small staff of 19 and now has about 120 employees.¹ In 1997/98, the budget for the NZSIS was set at \$10.584 million.² The current Director of Security is Richard Woods, a former senior diplomat who served as ambassador in Tehran and Paris. NZSIS headquarters are located in Wellington within the Ministry of Defence building. It has small branch offices in Christchurch and Auckland. The minister responsible for the NZSIS is the Prime Minister. The NZSIS is a counterintelligence agency which is the equivalent of the British Security Service (MI5), the Australian Security Intelligence Organisation (ASIO), the Canadian Security Intelligence Service (CSIS) or the National Security Division of the FBI in the United States.

A recent book by Nicky Hager³ has focussed public attention on another of the New Zealand agencies, the Government Communications Security Bureau (GCSB). The GCSB was formed in 1977 and now has a staff of approximately 230. It is located in Wellington and has listening stations in Waihopai, near Blenheim, and Tangimoana, on the North Island. The minister responsible for the GCSB is the Prime Minister. The GCSB is New Zealand's signals intelligence agency and is the equivalent of the British Government Communications Headquarters (GCHQ), Australia's Defence Signals Directorate (DSD), the Canadian Communications Security Establishment (CSE) and the American National Security Agency (NSA).

The third agency is the Directorate of Defence Intelligence (DDI). This was formed in 1964 by combining the intelligence arms of the Air Force, Navy and Army as a part of the establishment of a unified Ministry of Defence. A single Director of Defence Intelligence replaced the three separate service intelligence Directors in 1975. According to Hager, a small staff of about 15 persons is involved in defence intelligence matters.⁴ The main function of this agency is to collate military intelligence about the nations of the Pacific and South-East Asia. The minister responsible for the DDI is the Minister of Defence. It is located on the sixth floor of the Ministry of Defence building in Wellington.

In addition to the agencies there is a series of other intelligence groups related to the Office of the Prime Minister and the Cabinet. There is the Official's Committee for Domestic and External Security which reports directly to the Prime Minister. There is also an *ad hoc* Cabinet Committee on Intelligence and Security chaired by the Prime Minister. It considers issues related to the oversight, organization and priorities of the New Zealand intelligence community. Within the Department of the Prime Minister and the Cabinet there are two intelligence support groups, the Domestic and External Security Secretariat (DESS) and the External Assessments Bureau (EAB). The DESS renders advice to the Prime Minister on domestic and external security issues, as well as on intelligence policy and the management of terrorist incidents. It also provides advice and support to two of the oversight bodies, namely the Intelligence and Security Committee

of Parliamentarians and the Inspector-General of Intelligence and Security. The DESS has a staff of five and a budget projected for 2001/2002 of \$703,000.⁵ The External Assessments Bureau produces intelligence assessments based on intelligence from a wide variety of sources of events and trends abroad that may affect New Zealand interests. It has a staff of 33 and a projected budget for 2001/2002 of \$2.241 million.⁶

THE EARLY YEARS

The creation of the Security Service in 1956 was not the first time that New Zealand had had an intelligence agency. In late 1940, the Security Intelligence Bureau (SIB) had been formed, apparently upon the insistence of the British. It was modelled on MI5 and its first head was a Major Kenneth Folkes, a British military intelligence officer sent to New Zealand to head the SIB. He put together an organization of some 30 officers. Folkes did not do very well for he acquired a reputation as a womanizer, had poor relations with the police and was taken in by a hoax agent, Sydney Gordon Ross. Michael Parker reported that Folkes "was fired by the Prime Minister and returned home to England to serve out the rest of the war in deserved obscurity."⁷ The SIB was closed down at the end of the war.

In 1948, the British again approached New Zealand with the request that it establish a security service. Sir Percy Sillitoe, then head of MI5, visited New Zealand with a view to persuading the government to set up an equivalent of his own agency. The primary reason appears to have been a concern about possible communist penetration of Western countries. No immediate action was taken but eventually an interdepartmental committee was created which, in 1951, sent a set of recommendations to Prime Minister Holland. Holland took no action. Several years later, in 1954, the Australian Prime Minister, Robert Menzies, telephoned Holland to tell him that Vladimir Petrov, the Soviet spy uncovered in Australia, had indicated that the Soviets had an unnamed contact in the Office of the Prime Minister in New Zealand. This caused great concern but an election meant that it was not until 1956 that action was taken upon the 1951 interdepartmental committee recommendations. Finally, on 28 November 1956, the New Zealand Security Service was established by Order-in-Council.

Herbert Ellery Gilbert became the first head of the new Security Service. He was an artillery officer with a military intelligence background and strong anti-communist views. The Security Service was very small to begin with, having a total of only 19 staff in 1956 and 26 by 1961.⁸ Half of the staff were located in Wellington with the others in regional offices in Auckland and Christchurch. In 1962, the Security Service vote within the Department of Justice was a mere £100,000. Gilbert served as head of the Security Service until 1976 when he was replaced by Paul Molineaux. With Molineaux's arrival the Service began to grow more rapidly. By 1979, the staff had increased to 72 (with 14 in Auckland and 11 in Christchurch) and had budget to \$1.35 million. By Molineaux's retirement in 1983, the staff had grown to more than 160 and had a budget of \$4.5 million.⁹ This growth worried numerous groups that wondered whether there was enough subversion and espionage taking place in New Zealand to warrant such rapid growth.¹⁰

The first two decades of the new service were relatively quiet ones and the service received relatively little attention from politicians or the public. In 1962, two Soviet diplomats were expelled from the country and this indicated to many the usefulness of having the service. However, in 1966 the Service became the subject of some controversy when allegations were made that a Security Service agent, David Godfrey, who was studying part time at the University of Auckland, was also carrying out security probes of fellow students. The Service denied this and Gilbert even went on television for the first time to say that there was no truth to the allegations. A Commission of Inquiry into the Administration of the Security Intelligence Service was established to examine the matter and it recommended that "no member of the Security Service enrolled as a student should carry out inquiries into security matters within the precincts of the university."¹¹

ACCUSATIONS AND REVIEW

In 1971, the New Zealand Council for Civil Liberties drew attention to the NZSIS when it issued a report stating that some aspects of the 1969 *Security Intelligence Service Act* infringed civil liberties.¹² Another allegation against the Security Intelligence Service was made by Michael Parker, a reporter for *The Dominion*, when he claimed the Service gathered information on university students.¹³ A couple of days later the Service made a public statement denying it was conducting surveillance on university campuses.¹⁴ More serious allegations were made against the Service during the so-called Sutch affair. Dr. William Sutch was a former Secretary General at New Zealand's United Nations office in New York and a former head of the Department of Industries and Commerce. In 1974, he was charged under the 1951 *Official Secrets Act* with obtaining information calculated to be useful to an enemy. During his 1975 trial, allegations were made that his investigation and arrest had been made without properly informing the responsible minister, the Prime Minister, that officers of the Security Intelligence Service perjured themselves at the trial, and that Dr Sutch was "framed" as a result of collusion between the SIS and the KGB. A Sutch Defence Committee had been established during the period of the controversy and it said it would promote a campaign to abolish the Security Intelligence Service on the grounds that it was not answerable to anyone, that it spent taxpayers money with no apparent control and that it spread fear and suspicion among New Zealanders because of the secrecy of its structure.¹⁵ Added to all this Deputy Prime Minister Tizard openly stated that he would like to see the Service disbanded. This led Prime Minister Rowling to say that he openly disagreed with his deputy and that the Service would stay.¹⁶

Nevertheless, he asked the Chief Ombudsman, Sir Guy Powles, to undertake an inquiry "to ensure that the functions of the New Zealand Security Intelligence Service [were] in conformity with both the needs of our country and the character of our society and our democratic form of government."¹⁷ Powles was specifically asked to inquire into the extent to which the Service was needed, the appropriateness of the range of its activities, the adequacy of the arrangements for the control of the Service, the degree of secrecy required, the use made of the Service by government agencies and much else. In short, Sir Guy Powles was given an extremely broad mandate.

The report that Powles submitted in July 1976 was a strong endorsement of the Security Intelligence Service. Most importantly he said that there was a need for the Service and rejected the idea that intelligence operations could be taken over by the police. In fact, he stated that "there are some who would go so far as to say that New Zealand as a nation has no national secrets of sufficient importance to warrant taking any special steps to guard them from unauthorized publication or espionage. This, I think, is a wholly untenable position."¹⁸ He also disagreed with those who had said that New Zealand did not need to receive other nations' secrets and stated "it is without question in our national interest that we should receive as much of this wide-ranging information from overseas as we can."¹⁹ In addition, Sir Guy clearly exonerated the Service from any wrongdoing in the various charges of misconduct, especially in relation to the events surrounding the trial of Dr Sutch. In fact in relation to the Sutch incident he said there was not a shred of evidence to support the allegations and that the Service had at all times acted in conformity with its statute. Sir Guy Powles made numerous suggestions for changes but they did not amount to a call for radical change. One of his major recommendations was that a lower priority be given to the counter-subversion role of the Service relative to the counter-espionage and counter-terrorism roles since "subversion is no real threat to our national policy."²⁰ Powles also recommended various measures to enhance the accountability of the Service to the responsible minister.

The reaction to the report was largely positive as Sir Guy Powles had a reputation for fair-mindedness and even-handedness in relation to controversial issues. However, many were not pleased with its conclusions. The leadership of the Labour Party remained divided on the issue. Rowling, now leader of the Opposition, welcomed it while his deputy said that he still thought that there was no need for a Security Intelligence Service in New Zealand.²¹

AN EXPANDED INTELLIGENCE COMMUNITY AND CHANGING ROLES

Later in the 1970s the New Zealand Intelligence Community was expanded to include the Government Communications Security Bureau (GCSB). And in subsequent decades the role of the intelligence agencies were changed and modernized slowly but significantly.

According to Nicky Hager, the main promoter of the new signals intelligence agency was Group Captain Colin Hanson, the Director of Defence Intelligence in the mid 1970s.²² As DDI, Hanson was in charge of the New Zealand Combined Signals Organisation (NZCSO). This organization had been created in 1955 as the very small and restricted arm of the UKUSA network. Apparently with assistance from the UKUSA allies Hanson planned to create a separate agency that would provide a similar role to NSA, GCHQ, DSD and CSE, all of which had responsibility for ensuring the security of government communications security and gathering and analyzing signals intelligence. Hager states that the recommendation to establish the agency came from the newly formed New Zealand Intelligence Council and officially came into existence on 1 September 1977 with Hanson at its head.²³ The GCSB grew rapidly in terms of staff numbers and by the late 1980s had about 250 personnel.

The roles of the GCSB have changed considerably over the years. According to Hager it initially focussed its efforts on the Soviet Union. Later, Japanese targets and the nations of the South Pacific were added. So too were French activities in the South Pacific, especially their nuclear testing at Moruroa and Fangataufa.²⁴ Despite the additional roles, Soviet, and later Russian targets, remained important well into the 1990s.

The roles of the NZSIS have also changed over the years. The original roles were the vetting of government personnel for security, the security screening of people entering New Zealand or seeking citizenship, counter-espionage and counter-subversion. The 1969 New Zealand Security Intelligence Service Act stated the roles of the Service in general terms to be the obtaining, correlation and evaluation of intelligence, the advising of Ministers of the Crown and cooperating with other State services.²⁵

The first major change was one of emphasis and came about as the result of the Powles report, that a lower priority be given to subversion and higher priority to espionage and terrorism. Powles based his recommendation on the fact that he could see no threat from within, that SIS officers were likely to confuse subversion and legitimate dissent and that many groups and individuals clearly worried that "the Service was going beyond the defence of the realm to inquire into political opinions and activities that have nothing to do with overthrowing the government by unlawful means." He also stated that "I am also impressed, as a result of my inquiry, by the view that extensions of the activities of the Service into these fringe areas of political dissent is counter-productive, and could produce rather than allay subversion."²⁶

The second major change occurred with the passage of the *New Zealand Security Intelligence Service Amendment Act* of 1977. This amendment revised the counter-terrorism role and changed the definition of terrorism to "planning, threatening, using, or attempting to use violence to coerce, deter, or intimidate the lawful authority of the State in New Zealand; or the community throughout New Zealand or in any area in New Zealand for the purpose of furthering any political aim."²⁷ The amendment was partly a consequence of Sir Guy Powles' recommendation that this role, along with counter-espionage, be emphasized at the expense of counter-subversion and partly a consequence of the greatly increased worry about terrorism that had occurred at that time.

The third major change occurred with the passage of the *New Zealand Security Intelligence Service Amendment Act* of 1996. This added two completely new roles to the Security Intelligence Service by changing the definition of the term "security" to include "the making of a contribution to New Zealand's international well-being or economic well-being."²⁸ These changes generated considerable controversy for many were concerned about both the Service's extension of the powers and the generality of the terms "international well-being" and "economic well-being." Nicky Hager argues that the expanded roles are really largely a consequence of the need for the SIS to invent new tasks for itself as a result of the end of the Cold War and, in fact, he states "one is left with the impression that economic intelligence is primarily just a convenient argument used by the intelligence organisations to justify their existence and budgets in the post-Cold War era."²⁹ Others were concerned that the vagueness of the terms might result in

interpretations that could lead to the protection of a particular economic philosophy, namely the free market economic philosophy that New Zealand so suddenly and completely adopted in the 1980s. Such fears were not allayed by the tendency these days to associate that particular form of economic organization with democracy, as in the increased use of the term "market-democracy." Indeed the Peace Movement Aotearoa said the revised definition of security was a "charter for abuse" and that "in particular, the opponents of APEC and the neoliberal agenda believe that they will be targetted by the NZSIS for their activities."³⁰ However, the government did attempt to allay fears by strengthening a 1977 amendment to the 1969 Act by which the Service was prevented from investigating people engaged in legal protest.

THE DEVELOPMENT OF ACCOUNTABILITY

The manner in which the New Zealand intelligence services are held accountable has also changed significantly. The foundation of the Security Service in 1956 was effected through an Order-in-Council and not legislation. At the start of its life the only form of accountability was through the doctrine of ministerial responsibility. In 1969, however, the Service was given a statutory mandate with the adoption of the *New Zealand Security Intelligence Service Act*. This act spelled out the functions of the SIS and established a Commissioner of Security Appeals. The commissioner had to be a barrister or a solicitor with not less than seven years practice. The function of the commissioner was to consider complaints from members of the public who considered themselves to have been adversely affected by actions of the Service. This included people who had complaints about the vetting procedures of the SIS. The 1969 Act is of considerable significance because with its passage "New Zealand became the first common law country to set up an appeal authority for security cases."³¹

In 1975, Prime Minister Rowling, partly in response to the accusations against the Service, approved the terms of reference for the New Zealand Intelligence Council. The purpose of the council was to "maintain a general oversight of New Zealand's intelligence activities (other than those involving internal security functions) and is to ensure that these are properly co-ordinated so that the New Zealand Council's requirements in the intelligence field are met effectively."³² The council was a committee of the Permanent Heads of the relevant government departments chaired by the Permanent Head of the Prime Minister's Department. In his 1976 report the Chief Ombudsman recommended that the oversight function be extended to internal intelligence matters and that the Director of the SIS be a member of the council.³³

In 1977, the NZSIS Act was amended to state explicitly that it was not a function of the Security Intelligence Service "to institute surveillance on any person or class of persons by reason only of his or their involvement in lawful protest or dissent in respect of any matter affecting the Constitution, laws, or Government of New Zealand."³⁴ This was intended as legal reassurance that the Service did not, and may not, investigate people just because they take part in a legal protest activity or disagree with the government of the day.

Two decades later Parliament passed three pieces of legislation dealing with the accountability of the New Zealand intelligence services. These were the *New Zealand Security Intelligence Service Amendment Act 1996*, the *Intelligence and Security Committee Act 1996*, and the *Inspector-General of Intelligence and Security Act 1996*. The first of these acts was significant in terms of accountability in that it added a statement that it is not a function of the Service to further the interests of any political party. This was intended to allay the fears of those that had alleged that partisanship was a real possibility because the NZSIS reported to the Prime Minister. It was also significant in that it affirmed that the act does not limit the rights of individuals to engage in lawful protest, advocacy or dissent and that such engagement will not result in surveillance.

The *Intelligence and Security Committee Act* established a new committee "to examine the policy, administration and expenditure of each intelligence and security agency."³⁵ The committee had five members, the Prime Minister (chairperson), the Leader of the Opposition, two members of the House nominated by the Prime Minister after consultation with the leaders of each party in government and one member of the House nominated by the Leader of the Opposition, after consultation with each leader not in government or in coalition with a government party. The membership of the committee has to be endorsed by Parliament. Of major significance was the fact that the act covered both the NZSIS and the GCSB. In introducing the legislation creating the committee the Prime Minister indicated that the government had recognized that the existing oversight and review arrangements were out of date and that members of the House had repeatedly drawn attention to this.³⁶ He also indicated that New Zealand had taken note of the adoption by legislation of Parliamentary oversight committees in Britain and Australia.

The *New Zealand Inspector-General of Security and Intelligence Act of 1996* created an office that encompassed and went beyond the earlier Commissioner of Security Appeals. The Inspector-General's role is to assist each minister who is responsible for an intelligence and security agency in the oversight and review of that agency, to ensure that the activities of the agency comply with the law and human rights, and to ensure that complaints relating to agency activities, be they from the public or from an agency employee, are independently investigated. As implied in the foregoing the Inspector-General's role encompasses both the NZSIS and the GCSB. The Inspector-General is required to be someone who has previously held office as a Judge of the High Court of New Zealand. In some cases the Inspector-General can investigate on his own initiative, in others ministerial concurrence is needed. The Inspector-General is required to report annually on inquiries to each minister responsible for a security and intelligence agency, and to the Prime Minister for tabling in the House.

It is clear from the foregoing that the state of accountability and oversight in New Zealand has progressed considerably over the past decades. However, it is still the case that the GCSB has no statutory base and that the DDI is dealt with differently through the structures of the Ministry of Defence. Despite the progress made in terms of accountability there are those who are dismissive of the new arrangements and consider them to be little more than a smokescreen. For example, Nicky Hager has argued that the

manner of appointment of the members of the Security and Intelligence Committee has removed "much of the point of having this Parliamentary check and balance to government oversight," and that the Inspector-General legislation "was carefully designed to give only token influence to Parliament and to prevent any important new information from reaching the public or the politicians."³⁷ In fact, there is some question as to just how much the minister in charge of the NZSIS and GCSB, the Prime Minister, has known about their operations over the years for former Prime Minister Lange remarked in his introduction to Hager's book on the GCSB ". . . it is an outrage that I and other ministers were told so little, and this raises the question of to whom those concerned saw themselves ultimately answerable."³⁸ The New Zealand Court of Appeal has also been critical of aspects of oversight of the intelligence services (Court of Appeal of New Zealand, 1999) as has the Privacy Commissioner.³⁹ In the minds of many people the credibility of the Inspector-General was thrown into question when in the Abdul Aziz Choudry case, he concluded that an NZSIS house entry had been lawfully authorized whereas later the New Zealand Court of Appeal found that it had not been. There has also been some criticism of the Parliamentary committee to the point that in February 2000 the Deputy Prime Minister, Jim Anderton, suggested that scrutiny should be undertaken by a full Parliamentary Select Committee so that Parliament could get detailed information.⁴⁰ However, Prime Minister Helen Clarke quickly stated in response that she did not want to see the Security Intelligence Service open to full public scrutiny by an ordinary select committee as proposed by her deputy.⁴¹

SOME RECENT CONTROVERSIES

Since the adoption of the new devices of accountability the New Zealand security and intelligence services have been involved in several fairly public controversies that have led some to question their roles and the need for the services.

What has become known as the Choudry incident began when Dr David Small, a lecturer at the University of Canterbury, discovered on 13 July 1996 two men leaving the home of a friend, Aziz Choudry, a spokesperson for an anti-free trade organization called Trading for Our Lives. A complaint was made to the police. Both Small and Choudry were involved in a GATT watchdog conference being held at the time and organized as an alternative to an APEC Trade Ministers conference to be held the following day in Christchurch. On 18 July, after the conference was over, there was a bomb scare in which a device, which turned out to have no explosives in it, was discovered near the offices of the Christchurch City Council. The police issued search warrants against Choudry and Small and executed these, but there was no follow-up.⁴²

Choudry and Small, and many others, suspected that those who had initially entered Choudry's premises had been NZSIS officers. Dr Jane Kelsey, an Associate Professor of Law at the University of Auckland, summed up the general conclusions of many concerning the incident. She said that it was fair to assume that the break-in was conducted by the NZSIS, that it was a warning to all dissenters engaged in legitimate dissent against certain economic concepts and that the incident was symptomatic of the growing intolerance shown toward those who objected to New Zealand's sharp turn to the

embracing of free market concepts. She also asserted that it was just the sort of thing that she had feared from the recent change in the definition of the role of SIS to include "making a contribution to the economic well-being" of the country.⁴³

Choudry decided to take legal action against the SIS and he engaged a prominent Auckland lawyer to act as senior counsel. Choudry and Small also launched a complaint with the Inspector-General of Security and Intelligence. A Democratic Defence Rights Fund was established with people prominent in academia, unions, churches and various protest groups being active supporters of the fund. A GATT watchdog group called for a public inquiry into the activities of the NZSIS.

Choudry and Small were displeased with the outcome of the complaint to the Inspector-General because he stated that "my conclusion was that the actions and procedures which affected the complainants directly or indirectly were lawful, reasonable and justified. No crime or offence was committed on 13 July. In the result I decided that the complaints could not be upheld and that this was not a case for any recommendation of any form of redress or other remedy."⁴⁴ However, Choudry and Small fared better in the courts for the New Zealand Court of Appeal concluded in 1998 that the relevant warrant did not and could not empower entry into Choudry's premises. That is, the NZSIS interception warrants did not confer the right to enter private property. Moreover, the Appeal Court also rejected the government's efforts to stop, on national security grounds, the inspection of many documents related to the case.⁴⁵ As a result of the finding of the Court of Appeal the government introduced a bill into Parliament which became the *New Zealand Security Intelligence Service Amendment Act of 1999* which extended the power of the NZSIS to enter into any place in New Zealand.

A series of concerns have recently arisen in relation to the GCSB. This development was partly a consequence of the publication in 1996 of Hager's *Secret Power*. It also stemmed from repeated rumors that the GCSB was monitoring New Zealand communications. Another factor was the assertion that the GCSB was essentially working at the behest of allies and was not fully under national control. Finally, it was partly a consequence of a government announcement in 1997 that a second antenna would be added at the GCSB Waihopai facility and that an Order-in-Council had been passed that would enable the station to collect foreign voice communications that might reasonably be expected to contain foreign intelligence. As a consequence of many questions then Prime Minister Bolger requested the Inspector-General to undertake two examinations. The first concerned GCSB's established internal practices and procedures to ensure that they were lawful and proper, had no adverse or improper impact on the lives of New Zealand citizens and ensured that only foreign communications were collected. The second concerned the extent of national control of SIGINT collection and reporting by the GCSB.

On the first matter the Inspector-General issued a preliminary report in June 1998 which concluded that all was well.⁴⁶ He then issued a final report in April 1999 in which he concluded that the GCSB's rules and procedures were appropriate and that "the application of these rules by the GCSB and its staff and their operating methods and

procedures are effective to ensure that the GCSB collects and reports on foreign communications only."⁴⁷ On the second matter the Inspector-General issued a report in April 1999 that concluded that "I am satisfied from my inquiry and from my knowledge of the GCSB that it is not managed, controlled or influenced by the USA or other of its intelligence partners contrary to our own national interests."⁴⁸

Another recent concern relating to both the NZSIS and the GCSB was their being used to advise the Social Welfare Department on how to prevent leaks of information that were occurring. The Social Welfare Department confirmed that it had its boardroom swept for electronic eavesdropping devices after fears that information was being leaked. Public concern was expressed about this action because it occurred just before an election and the leaks were going to politicians and reporters so there was a worry that the agencies were being used for political purposes to protect the government of the day. However, a review of the matter by the Inspector-General concluded that the conduct of the NZSIS and GCSB in the matter was proper and lawful and that it was normal practice for the NZSIS to be used to advise government departments on security, and for the GCSB to be used to advise on protecting official information against unauthorized disclosure. However, the Inspector-General did indicate that it might have been an error of judgement on Social Welfare's part to have told staff of NZSIS involvement.⁴⁹

CONCLUSION

For a relatively small nation far removed from the world's trouble spots with small intelligence and security agencies New Zealand has managed to generate quite a large amount of controversy concerning their activities. Moreover, none of the three major questions set out at the beginning of this article appear to have been answered satisfactorily over the years. On the first question of whether or not a country like New Zealand needs intelligence and security agencies at all there are still many New Zealanders, including some prominent politicians, who say that it does not. On the second question of whether or not the nation has an appropriate mix of agencies that are able to provide appropriate and effective warning to government, there are many who are skeptical. Some, like Nicky Hager, assert that at least one of the agencies, the GCSB, largely serves foreign interests and that the money spent on signals intelligence might better serve New Zealand's own interests if it were given to an expanded External Assessments Bureau. He is also skeptical of the value of much of the intelligence as he argues the agencies gave no warning of the Rainbow Warrior incident or the Fiji coup and that government officials he had interviewed said they made little use of the intelligence produced by the agencies.⁵⁰ On the third question of whether or not the agencies are held properly accountable and are not themselves likely to become a danger to the very system they are intended to protect, opinion appears to be divided. While there is far more accountability than there used to be, many regard the system of accountability as having serious limitations and liable to be short-circuited by governments that are regarded as overly secretive and prone to making what was illegal, as in the Choudry case, legal. Clearly controversy over the roles and the very existence of the New Zealand intelligence and security services will continue into the foreseeable future.

Endnotes

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