

**Executive Summary**  
**2023 Annual Meeting of the Five Eyes Intelligence Oversight and Review Council**  
**September 19-21, 2023 / Ottawa, Ontario, Canada**  
**Prepared by the**  
**Office of the Inspector General of the Intelligence Community**

**INTRODUCTION**

In its role as the Executive Secretariat of the Five Eyes Intelligence Oversight and Review Council (the Council), the Office of the Inspector General of the Intelligence Community of the United States prepared this Executive Summary of the Council's annual meeting held September 19-21, 2023, in Ottawa, Ontario, Canada.

The Council holds at least one meeting in-person per year. This year's meeting, hosted by Canada's National Security and Intelligence Review Agency, was attended by representatives from all Five Eyes partner countries. The theme for this year's meeting was the *Lifecycle of National Security Accountability*, with three key sub-themes: Initiation, De-confliction and Cooperation, and Execution and After-care. Members exchanged views on several topics of mutual interest and concern, such as challenges and best practices in supporting ministerial or executive accountability; review topic prioritization; cooperation with data protection, civil liberties boards, legislative oversight, courts, judicial commissioners, and non-national security intelligence accountability bodies; reporting; recommendations; and strengthening accountability for the future. The meeting also provided opportunities for networking and cooperation between the Council members.

**BACKGROUND**

The Council was created in the spirit of the existing Five Eyes partnership, the intelligence alliance comprising Australia, Canada, New Zealand, the United Kingdom, and the United States. The following non-political intelligence oversight, review, and security entities of the Five Eyes countries comprise the Council: the Office of the Inspector-General of Intelligence and Security of Australia, the Office of the Intelligence Commissioner and the National Security and Intelligence Review Agency of Canada, the Office of the Inspector-General of Intelligence and Security of New Zealand, the Investigatory Powers Commissioner's Office of the United Kingdom, and the Office of the Inspector General of the Intelligence Community of the United States.

The Council members exchange views on subjects of mutual interest and concern; compare best practices in review and oversight methodology; explore areas where cooperation on reviews and the sharing of results is appropriate; encourage transparency to the largest extent possible to enhance public trust; and maintain contact with political offices, oversight and review committees, and non-Five Eyes countries as appropriate.

**DAY 1**

The first day of the 2023 meeting was held at the John G. Diefenbaker Building in Ottawa. The Honorable Marie Deschamps, Chair of Canada's National Security and Intelligence Review Agency (NSIRA) welcomed participants. The first day featured a keynote address by The Honorable Murray Sinclair. Mr. Sinclair shared his experience as Chief Commissioner of Canada's Indian Residential Schools Truth and Reconciliation Commission (TRC). Mr. Sinclair described the history and significance of the TRC, and his address highlighted that independence, well balanced teams, transparency, recommendations that push change, and the audience we speak to are critical concepts for oversight work conducted by Council members.

*Session 1 – Setting the Foundation*

NSIRA Vice-Chair Mr. Craig Forcese moderated session 1 on setting the foundation. He proposed that intelligence and national security accountability be viewed as a spectrum upon which each participant's organization occupies a different position. While the nomenclature varies across countries, members have two distinct roles. The first role is as an oversight body that lays within the chain of command and is involved in approvals and decision making. The second role is as a review body which is outside the chain of command and is limited to making recommendations.

Council members discussed where their organizations were situated in the bigger picture of national security oversight, to include their mandates, functions, and access. The Honorable Christopher Jessup KC, Australia's Inspector-General of Intelligence and Security (IGIS) explained that his office assists Ministers in the oversight and review of compliance with the law and the propriety of intelligence agency activities. Dr. Jessup further described IGIS's inspection and complaints functions. Mr. Brendan Horsley, New Zealand's Inspector General of Intelligence and Security (IGIS) reported a similar mandate and function to Australia, but on a smaller scale. Despite its relative size, New Zealand's IGIS reported an ideal access model where direct access terminals for inspection personnel are located within its offices.

The Right Honorable Sir Brian Leveson, Investigatory Powers Commissioner for the United Kingdom, described that the Investigatory Powers Commissioner's Office (IPCO) is responsible for oversight of around 600 public authorities and considers whether to approve the decision to issue warrants. The IPC can notify individuals of issues of serious error, loss or harm and their rights to apply to the Investigatory Powers Tribunal (IPT). The IPT can also refer items to IPCO for investigation or assistance. Sir Brian encouraged others to share their best practices, particularly what has been attempted and what has worked, noting the considerable value of increased engagement over the past years among Five Eyes partners.

The Honorable Thomas Monheim, Inspector General of the Intelligence Community, briefly explained that, within the United States, the Inspector General (IG) is an important oversight mechanism that promotes the lawfulness and effectiveness of the agency it oversees by detecting and preventing abuses through audits, inspections, and investigations. Additionally, The Honorable Simon Noël, Intelligence Commissioner (IC) for Canada, described the IC's jurisdiction over two national agencies. Lastly, Mr. Forcese presented NSIRA as a relatively new

organization, created as a solution to silos and stove-piping within the previous oversight bodies. The previous model allowed the departments to cooperate on intelligence and national security issues but left a gap in oversight because the oversight bodies were restricted to reviewing only their respective departments. Mr. Forcese described NSIRA as the access point to the intelligence community for the public and as the proxy for the public and parliament.

### *Session 2 – Ministerial-level or Executive Control*

Mr. Noël moderated session 2 on oversight body interaction with ministers or executive bodies. Here, the differing roles and responsibilities of Council members translated into a variety of ways that ministers and other elements of the executive branch are engaged. In Canada, along with authorizing specific activities, Ministers issue directions to departments and agencies under their purview. NSIRA is required to review the implementation of all ministerial directions related to national security and intelligence. NSIRA also reports annually to the Minister on the activities, compliance, access, accountability, performance, and relationship with two key departments.

New Zealand's IGIS examines the lawfulness and propriety of intelligence agencies and assists with ministerial decision-making through reporting and recommendations; it does not have a role in approving operations. The Minister has ultimate accountability, along with New Zealand's Chief Commissioner of Intelligence Warrants. Similarly, Australia's IGIS has no role in warrant approvals. Agencies under the IG's jurisdiction report to various ministers or the Prime Minister. Australia's IGIS also reports bi-annually to Ministers and can receive prime ministerial direction regarding what to inquire into. Within the U.K., warrants are also signed by the Minister or Chief Officer. Signed warrant applications are sent to the IPCO to be reviewed for necessity, proportionality, and the lawfulness of a decisions by Ministers. Canada has a comparable system in which the IC reviews the decisions of Ministers to grant warrants.

The U.S. delegation described the firm position of IGs within the U.S. executive branch and their responsibilities to Congress. The Honorable Michael Horowitz, Inspector General of the Department of Justice, noted that significant issues should not come as a surprise to key stakeholders when a report is published. Issues should be raised as they are identified to promote accountability through cooperation. Mr. Monheim raised that IGs cannot rely on the departmental briefings when it comes to advances in technology, furthering that oversight teams need to have the expertise to look at technological advances the departments are making. The Honorable Robin Ashton, Inspector General of the Central Intelligence Agency, stated that while the U.S. Congress provides billions to enhance and innovate technology, IGs are reporting to Congress that the technology developed by U.S. government agencies are not always ready for use, as expected by Congress. She noted the challenge of having to stay one step ahead and emphasized the importance of bringing people in who have independence and can make crucial observations regarding advanced technology.

### *Session 3 – Review Topic Triaging/Proactive Oversight Risk Assessment*

Mr. Horsley, along with Mr. Graeme Speden, IGIS's Deputy Inspector General, moderated session 3 on review topic triaging and proactive oversight risk assessment. This

session furthered the discussion on work programming that began at the 2022 annual meeting and highlighted Council members efforts to select work in an objective manner to best utilize available resources. New Zealand's IGIS opened the session describing the IG's "sophisticated ad hoc" method for selecting work, a model IGIS said closely resembles NSIRA's. New Zealand said its IG discusses ideas and topics annually, prioritizing work based on several considerations. These considerations include topics that examine known issues, areas subject to a high-risk of non-compliance, novel techniques, and areas not yet examined. For their part, the U.S. IGs have varied flexibility or available resources to undertake discretionary work. Congress mandates some IG work, and many IGs have mandatory technology oversight requirements. The U.S. IGs also maintain whistleblower hotlines and processes for employees to raise special or emergency issues, both of which also require attention and resources.

All partners reported challenges using existing resources to achieve a balance between mandatory and discretionary work. Off-cycle or unplanned work also continues to put pressure on limited resources. Dr. Jessup echoed his colleagues, saying Australia's IGIS staffing constraints limit the amount of work that can be undertaken. Sir Brian also noted that the biggest challenge the IPCO faces is using its limited resources in the most effective way possible. Each Council member has slightly different ways of selecting work and all benefit from hearing the experiences of the other partners. One consistent theme among Council members was how to be the most efficient in balancing finite resources with both consistent and ad hoc tasks. These finite resources require balance between the different departments under their oversight. The efficacy of recommendations was also discussed, with the suggestion that making recommendations public improves uptake and implementation.

## **DAY 2**

The second day of the 2023 meeting was also held at the John G. Diefenbaker Building in Ottawa. Day two started with an open discussion on information collection in an adversarial environment. The Canadian IC explained the use of an amicus/special advocate by the Canadian Federal Court, a practice that also occurs in the United States and United Kingdom. Day two featured a keynote address by The Honorable Faisal Mirza, Ontario Superior Court of Justice, and former NSIRA member. Justice Mirza conveyed that true accountability comes from transparency. Justice Mirza stated that transparency is how we drive the accountability we promise the public, and how the public is provided with an opportunity to understand governance and national security. Justice Mirza also noted that we all know that transparency exists for a good reason but need to actively look for ways to be more transparent to improve the process.

### *Session 4 – Cooperation with Data Protection and Civil Liberties Boards*

IPCO moderated session 4 on cooperation with data protection and civil liberties boards. IPCO meets regularly with the Information Commissioner's Office to share insights and deconflict where mandates overlap. IPCO and the Information Commissioner's Office may also accompany each other on inspections. Cooperation between IPCO and non-government entities is more complicated, but still of considerable value. IPCO is keen to improve engagement and hear from civil society organizations about their experiences.

Australia's IGIS generally does not work with other boards or commissions and lacks a natural conduit for non-governmental organizations to engage with the IGIS or contest its work. However, agencies under its jurisdiction are required to implement privacy measures in consultation with the IG. The IG may also engage with the Australian Human Rights Commission in relation to its complaints mandate. In Canada, complementary and overlapping jurisdiction in data protection requires cooperative relationships that allow for information or issues to be handed off to the relevant body as necessary. Relationships are in place to share ideas and workplans; however, this is complicated by security clearance considerations and application of the "need to know" principle. Session 4 also included a discussion on transparency, in which member countries shared their respective strategies and challenges.

The participants noted that the challenge is not with other governmental organizations, as there are mandates and directives on sharing and deconfliction. The challenge is sharing with non-governmental organizations, where oversight and review bodies need to be able to receive information, share more information, be more proactive, and welcome engagement.

#### *Session 5 – Cooperation with Legislative Oversight or Review Committees*

Australia's IGIS moderated session 5 on cooperation with legislative oversight or review committees. This session highlighted that cooperation and deconfliction remain primary touch points with legislative bodies, except for the United States, where oversight bodies are well connected to and receive significant direction from Congress. Canada shared that NSIRA does not have specific touch points with parliamentary committees, nor have NSIRA reports been subject to inquiry by these committees.

The New Zealand system is divided within the legislation, requiring little deconfliction. Legislative oversight is focused on operational activities and not effectiveness or cost. New Zealand's Security and Intelligence Committee only considers annual reports and estimates. If asked under the inquiry mandate to consider operational activities, the matter is referred to the IG. The United Kingdom's IPCO does not advise on legislative matters, but in relation to the Investigatory Powers Act, will provide technical comments on critical changes to legislation involving intelligence and national security to help provide assurance that proposed legislation is subject to scrutiny and oversight. The U.K. parliament's Intelligence and Security Committee consists of an elected chair and eight other parliamentarians. The Committee and IPCO engage at the working level.

The U.S. oversight bodies are well connected with Congress. The Honorable Robert Storch, Inspector General of the Department of Defense, discussed his experiences in working with Congress, and how the dual reporting lines of the U.S. IGs present a challenge because IGs must keep both the head of the department and Congress fully informed. In addition, Congress directs a sizable portion of the IGs' work plans. Many IGs also engage informally with members of Congress and committee members to discuss ongoing issues and ensure the IGs are providing meaningful support.

*Session 6 – Communication with Courts and Judicial Commissioners*

The U.K.'s IPCO moderated session 6 on communication with courts and judicial commissioners. Sir Brian described IPCO's unique relationship with the judiciary due to IPCO's joint authorization and oversight mandate. NSIRA does not have the authority for direct contact or information sharing with the courts, so it must seek indirect means to communicate with the Federal Court.

The U.S. IGs are clearly situated within the executive branch of government and have limited engagement with the courts. The U.S. Department of Justice is responsible for providing awareness of changing jurisprudence and interpretation of law for the executive branch. The Australians have a similar arrangement, with government solicitors that provide advice on national security and intelligence matters. All government agencies must use government solicitors on intelligence matters, which provides consistency across its intelligence community.

Other than the U.K.'s IPCO, which has a blended authorization and oversight function split among its judicial commissioners, Council members are impeded from communicating and sharing information directly with their respective courts. Consequently, Canada, the United States, Australia, and New Zealand each rely, to varying degrees, on the same government-issued legal opinions that are guiding the actions of the agencies under their review.

*Session 7 – Learning from Non-National Security Intelligence Accountability Bodies*

NSIRA moderated session 7 on learning from non-national security intelligence accountability bodies. NSIRA shared that it is a learning organization focused on developing a community of practice with national and non-national security intelligence accountability bodies. NSIRA is working with agents of parliament to make oversight a career path across all areas to supplement in-house knowledge with staff who have transferable skills in areas such as strategic communications, recommendation tracking and follow-up, building and deploying teams, and legal secondments.

Mr. Horowitz discussed the U.S. Government Accountability Office, which is used by Congress to conduct oversight activities, and works with U.S. IGs to coordinate and deconflict oversight work. The IGs are also brought together under the Council of the Inspectors General on Integrity and Efficiency, where they engage on a variety of topics, to include technology. These relationships have been critical in bringing the IG community together to inform and change legislation. There is also informal engagement across all general counsels which share legal views on issues that have overlap between departments.

A new Act was just passed in New Zealand recognizing that the IGIS is isolated in its role and that identified five specific organizations with which it consults on work. New Zealand's IGIS noted that learning about engagement strategies was useful, but having the statutory ability to guide sharing is critical. The Council has been a valuable partner to IGIS by providing knowledge, priorities, methodology, and processes that could be modelled. Australia's IGIS also has several departments with whom it engages, including a number of other IGs which face common ethical and professional issues. In addition, the IGIS meets with the heads of other

integrity agencies and Australia's National Anti-Corruption Commission to share common approaches to inspections, complaints, and inquiries. IGIS also meets with the Commonwealth Ombudsman.

### **DAY 3**

The third day of the 2023 meeting was held at the Wilson House on Meech Lake. Mr. Forcese opened day three by explaining the significance of the Wilson House.

#### *Session 8 – Reporting*

Australia's IGIS moderated session 8 on reporting by intelligence oversight and review entities. The Council's Transparency and Public Engagement Working Group conducted a survey of Council members to identify similarities, differences, and challenges across members. Commonalities included the need for plain language, limited demand, and lack of interest in products, and minimal media attention. Partners reported common stakeholders, including legislative and executive bodies, academia, and the media. Public-facing documents like annual or semi-annual reports, as well as classified internal reports, challenge members on how to provide meaningful reporting within the confines of classification and redactions. Another common challenge is mustering the resources required to complete these documents. Australia's IGIS noted that it encourages its teams to maintain live documents or summaries throughout the year to expedite the annual reporting process. Other challenges included a lack of time and resources to sufficiently fulfill mandates, balancing aspiration with requirements, as well as maintaining realistic expectations regarding transparency.

The working group survey identified a number of common challenges faced by Council members. Foremost among these: engaging the public with regular, plain language, and meaningful reporting on the activities of reviewees. These challenges arise from insufficient resourcing, difficulty recruiting personnel with relevant technical expertise, and strict redaction requirements. Hiring professional copy editors, maintaining rolling text for annual reporting, implementing quality assurance processes, issuance of unclassified executive summaries, and use of short social media video "explainer" posts on key topics are among the strategies members are using to address their reporting challenges.

#### *Session 9 – Recommendations*

The U.S. delegation moderated session 9 on developing, tracking, and actioning recommendations. It started by highlighting that IGs exist to strengthen the agencies they review. Consequently, IGs need to work on things that matter, and things they are interested in improving. When developing a recommendation, addressing why the recommendation is important, and why the thing being reviewed or overseen currently functions the way it does increases the return on investment. Regarding recommendation follow up, the U.S. noted the importance of engaging with senior levels in a visible way to get buy-in and encourage change. It was noted that the tone and intention of agency heads gives credibility to oversight and helps change the culture of an organization. Addressing recommendations with senior staff also helps agency teams get the resources needed to implement change.

Recommendations are most frequently used by NSIRA, the United States, and the United Kingdom. New Zealand and Australia use them less frequently, seeing them as a tool to be used with discretion. While not all agencies used recommendations regularly, all agree on the importance of making achievable recommendations and that all recommendations should provide value to the reviewed organization. Having open dialogue with senior management in reviewed departments can greatly help with the ‘buy-in’ and timely actioning of recommendations. Both the United States and the United Kingdom openly track their recommendations and follow up with reviewed departments to ensure timely action.

#### *Session 10 – Strengthening Accountability for the Future*

Session 10 focused on strengthening accountability for the future and was moderated by a representative of the National Security Agency’s Office of Inspector General, who also serves as the lead for the Council’s Automated Data Processing and Artificial Intelligence Working Group. It was noted that artificial intelligence (AI) is both a tool and a challenge, and while it can be a useful tool, our inability to examine how outputs are generated makes it a “black hole.” In looking at AI as a tool, the United States is exploring the use of AI in the redaction and release space. The group considered the question of what challenges are present when overseeing automated technology or emerging technology.

NSIRA spoke to a major friction point: applying old laws to new technology. While this friction can spur useful debate and discussion, there is a need for multidisciplinary teams of legal, technology, and oversight specialists to bring their respective strength and knowledge to the discussion. In-house technology expertise is essential to evaluate and interpret how technology is being developed and used. It is also essential to being able to ask the right questions. NSIRA presented the following best practices: ensure foundational knowledge, create parallel challenges with partners, stakeholders, and departments; proactively identify the technology of tomorrow; and inject technology expertise at key points to get the most value. The Canadian IC noted that although technical knowledge resides with the national security and intelligence agencies, continuing efforts are undertaken to build and maintain sufficient internal knowledge to perform the oversight role.

#### **CLOSING**

Australia agreed to host the next annual Council meeting November 18-22, 2024, in Canberra and Sydney.