

Executive Summary
2018 Annual Meeting of the Five Eyes Intelligence Oversight and Review Council
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October 8-9, 2018
Prepared by the Office of the Inspector General of
the Intelligence Community of the United States

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 has prepared this Executive Summary of the Council's annual meeting held on October 8-9, 2018, in Canberra, Australia.

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 Council is comprised of the following non-political intelligence oversight, review, and security entities of the Five Eyes countries: the Office of the Inspector-General of Intelligence and Security of Australia; the Office of the Communications Security Establishment Commissioner and the Security and Intelligence Review Committee of Canada; the Commissioner of Intelligence Warrants and 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 permitted where 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.

The Council holds at least one meeting in person per year. This year's conference, hosted by the Honorable Margaret Stone, the Inspector-General of the Office of the Inspector-General of Intelligence and Security of Australia, was attended by representatives from all Five Eye partner countries. *See Appendix A* for a list of attendees. This year's conference agenda focused on a theme of independence and keeping up with technology.

Day 1, Session One, Recent Developments:

Each member outlined developments within their jurisdiction since last year's annual meeting, including policy and legislative changes affecting their work and their current main challenges:

- The majority of Council members continued to experience review, oversight, and structural changes in the last year.
- While the review and oversight authorities and responsibilities of several Council members have grown in scope, the members discussed challenges associated in outfitting their offices with the right number and subject matter expertise of their workforce to address the expanded authorities. Those members authorized to expand the size of their workforce expressed challenges with recruiting and onboarding the new employees.
- Some members expressed challenges in determining the full scope of their authorities and the difficulties associated with the interpretation of new legislation, particularly with terms which are not defined in legislation, such as “intelligence.”
- The Canadian and New Zealand delegations described the results of their successful efforts to exchange personnel in the past year.
- The members expressed the challenges and successes associated with sharing data between members, as well as between intelligence services. The United Kingdom’s delegation expressed interest in addressing this issue in more detail during next year’s annual conference.
- The members described their efforts to provide the public with more transparency of their oversight efforts, including the challenges associated with seeking input on best practices from non-governmental organizations (NGOs).

See Appendix B for the materials provided by Council members on this topic.

Day 1, Session Two, Independence:

The bulk of the first day’s events focused on the importance of and challenges associated with non-political intelligence review and oversight entities maintaining their institutional independence. Each Council member addressed the broad theme of independence from their perspective. The issues discussed included the importance of independence, the security of their independence and its limitations, the relative importance of actual and perceived independence, the potential for compromise and how independence might be compromised, and how review and oversight bodies demonstrate their independence. Subjects of mutual interest and concern on the issue of independence included the following:

- The delegates discussed their specific statutory and regulatory authorities provided to them to conduct their oversight responsibilities and to report their findings, publicly or otherwise.

- The delegates discussed challenges to independence arising from the size and expertise of their workforces.
- The delegates discussed the different reporting relationships between them and their respective intelligence services, as well as between them and their respective executive decision-makers.
- The delegates discussed how the selection and removal process for senior intelligence oversight leadership can serve to protect or undermine independence.
- The delegates discussed the ability of intelligence services and executive decision-makers to influence the content, scope, or direction of their reports, investigations, and findings.
- The delegates discussed the ability of intelligence services and executive decision-makers to restrict review and intelligence oversight entities' access to information.
- The delegates discussed the ability of intelligence services and executive decision-makers to influence intelligence review and oversight entities' operations and effectiveness through budget authorities.

See Appendix C for the materials provided by Council members on this topic.

Following the group discussion, the Council members attended a tour of Parliament House and met with the Secretariat of the Parliamentary Joint Committee on Intelligence and Security as well as a Member of the Joint Committee.

Day 2, Keynote Address:

Alexander W. Joel, the Chief of the Office of Civil Liberties, Privacy, and Transparency with the United States Office of the Director of National Intelligence (ODNI), delivered a keynote address to the Council members as well as senior officials in the Australian and New Zealand intelligence services concerning the importance of encouraging transparency to the largest extent possible to enhance public trust.

Day 2, Session Three, Keeping Up with Technology:

The bulk of the second day's events focused on the importance of and challenges associated with the intelligence review and oversight entities' abilities to keep up with technology. Each member addressed their use of technology as part of their intelligence review and oversight responsibilities. The issues discussed included challenges associated with hiring, training, and retaining their workforces, the potential for capture by the intelligence services, and developing cultures of compliance with intelligence services subject to intelligence review and oversight.

Subjects of mutual interest and concern on the issue of keeping up with technology included the following:

- The ways intelligence review and oversight entities can understand the technology used by the intelligence services.
- The ways intelligence review and oversight entities can use the technology already in use by the intelligence services.
- The role of intelligence review and oversight entities in the privacy debate concerning the collection of bulk data and the role of technology in such collection.
- The ability to build review and oversight compliance protections into technology used by the intelligence community at its creation and development, rather than after it has been created, developed, and implemented.
- The use of reference groups to assist intelligence review and oversight entities in their efforts to understand and monitor technology, such as the Technical Reference Group and the Technology Advisory Panel in use in New Zealand and the United Kingdom, respectively.

See Appendix D for the list of materials provided by Council members on this topic.

Day 2, Session Four, Unauthorized Disclosures:

Each member addressed the importance of providing whistleblowers with authorized methods to disclose classified national security information relating to allegations of fraud or abuse without risk of retaliation or harm to national security. The delegations discussed the specific statutory or other authorities to provide whistleblowers with authorized means to disclose classified national security information relating to allegations of fraud or abuse. As part of discussing their respective protected disclosure regimes, the delegations addressed the following issues, among others:

- Best practices to foster a culture of speaking up within intelligence communities;
- Best practices on workforce training and messaging to provide awareness of the authorized processes to disclose allegations of fraud or abuse concerning national security information;
- Best practices to protect whistleblowers, both government employees and government contractors, from reprisal for making protected disclosures.
- Best practices to investigate whistleblower complaints, including whistleblower reprisal allegations.

- The challenges in educating the workforce on the differences between protected disclosures, policy disputes, and unauthorized leaks of classified information.

See Appendix E for the list of materials provided by Council members on this topic.

Day 2, Session Five, Exchange Programs:

The Council members continued to explore areas during the conference where they could cooperate on reviews and share results where appropriate. The members expressed mutual interest in cooperating on reviews, particularly in terms of sharing employees, and expressed mutual interest in continuing their efforts to resolve the security challenges associated with sharing employees and results. The Canadian and New Zealand delegations described the results of their successful efforts to share personnel and tips for future sharing arrangements. *See Appendix F.* The delegates also discussed a concept proposed by the Canadian Office of the Communications Security Establishment Commissioner for a joint or concurrent review concerning the policies and procedures used by the Council members' respective intelligence services to protect the personal identification information of Five Eyes countries' citizens.

Conclusion:

The United Kingdom agreed to host the next annual Council meeting at a location and on a date yet to be determined.

The delegates agreed to hold a quarterly conference call in January at a date and time to be determined to discuss, among other things, joint/concurrent project opportunities and potential topics for the 2019 annual Council meeting.