



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

Summary of Reference Group meeting - 20 February 2019

Strategies for oversight to engage with civil society

Building on a 2018 UK report, *Strategies for Engagement Between Civil Society and Intelligence Oversight Bodies* (Franklin and King) (www.newamerica.org/oti/reports/strategies-engagement-between-civil-society-and-intelligence-oversight-community) the group discussed their ideas of the specific benefits that might come from the IGIS engaging directly with parts of civil society, and ideas for how best to carry out broad engagements. Ideas and observations included:

- It would raise awareness of the Office of the IGIS (OIGIS), including people's confidence to contact the office, and to ask questions or to make complaints, if there was more direct face to face communication with groups across the country.
- It is important that the OIGIS speaks to groups outside the intelligence and security community or Wellington public servants or "political insiders".
- There needs to be enough information in the public domain already to make engagement with civil society useful: civil society needs to know what it has and can provide to the engagement. Why to engage with the IGIS, on what issues?
- A common problem for individuals approaching a body like the OIGIS directly is a lack of trust in complaints processes.
- Legal representatives can assist in pursuing complaints, but this requires lawyers to be able to access civil legal aid without too much difficulty.

Discussion touched on possible ways to increase engagement:

- promote awareness of the IGIS and role to Community Law Centres
- have a secure drop facility for the public to contact OIGIS (like media tip lines)
- hold workshops to discuss with community leaders what the OIGIS is and what we do
- schedule contact time in communities – a physical presence is invaluable
- allocation of resources for IGIS to make this sort of engagement possible.

Recent IGIS reports

The Group discussed the IGIS's recent reports. Four were published in December 2018: The Annual Report for 2017-18; the ISA Warrants report; Report on the Service obtaining personal information from Banks; Report on the Service approach to the law of privilege. All are on the OIGIS website.

Some points from the discussion included:

- Who are the OIGIS's public audiences? Single page summaries of reports might reach an even broader audience.

The value of technical expertise in obtaining a profound understanding of the activities of the agencies, especially in SIGINT activity. It was suggested that in some cases it might be enough to understand the policy implications of the activity or warrant; in others it might be important to

understand what the tools and techniques are capable of yielding and therefore the questions to ask.

Other issues

- What happens when the IGIS and Solicitor-General arrive at a different conclusion about the legality of something the agencies have done/are doing? Reference was made to the public discussion that morning before the Intelligence and Security Committee where the Minister's expectations and the role of the Solicitor-General relative to the IGIS were discussed.
- SSC's report into public service contracting of private surveillance (Thompson and Clark issue) has raised the awareness across the board of government "intelligence gathering/spying" activities. The SSC's "Model Standards" for all government agencies were noted. It confirms that all government agencies must recognise that there are general sources of binding law and standards outside their own governing legislation – eg the Bill of Rights Act, the Privacy Act, the common law.
- The group noted Canada's ongoing legislative transition to a "functional" approach to oversight of intelligence and security functions across government agencies. The test of "national security operations" does not limit the oversight body's purview to specified agencies and means there is independent, external oversight of all intelligence functions, regardless of which government agency is exercising the function. The UK and Australia have a similar functional approach.
- It's important that the NZ IGIS has a good understanding of the relationship between the two dedicated intelligence and security agencies and government departments who generate intelligence and who they share intelligence with (eg DIA, MBIE, Customs, NZDF, Police.)
- Should interactions between government agencies be based on public Memoranda of Understanding? Should information shared by government agencies with international partners be described?
- What happens when technical expertise, knowledge of systems, and tradecraft developed by working in government intelligence agencies is later used in the outside world by contractors? Discussion of United States' public reporting of "Project Raven". What sort of monitoring is done? How does NZ law measure up in this situation? It's a new problem (the scale of it) and raises the policy question of where the law should be on the export of national security expertise.