

ORIGINALS

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10 January 2011

**SCENARIO NOTE FOR CHIEF'S BRIEFING TO THE NATIONAL SECURITY ADVISOR
 CSE COMMISSIONER'S REVIEW OF ACTIVITIES**

Introduction

This scenario note is provided in advance of your meeting with the National Security Advisor (NSA), Mr. Stephen Rigby, to brief him on the referenced review. Below are suggested speaking points for your briefing to the NSA.

Background

On 16 December 2010, CSEC received the Commissioner's latest review report, which examined activities conducted during the period of October 2008 to October 2009.

This was the first review that focused exclusively on these activities. Previous reviews – *CSEC Support to the Royal Canadian Mounted Police (2006)*, *CSEC's Collection and Use of Metadata (2008)*, and *CSEC's Support to the Canadian Security Intelligence Service (2008)* – dealt with tangentially.

These earlier reviews provided the grounds for the focused review. In each of the previous reviews, CSEC stated that its activities were conducted under part (a) of the mandate. However, the Commissioner believed that, in certain cases, part (c) of the mandate would have been a more appropriate authority. At issue was whether meant that CSEC's activities were "directed at" Canadians, and therefore not a part (a) activity.

Given the issues raised, you suspended activities from April 2007 to October 2008. Although satisfied that these activities were not "directed at" Canadians, you felt that additional policy guidance was necessary to ensure that these activities were done lawfully and that appropriate management accountabilities were in place. With the promulgation of *OPS-1-10 Procedures for Metadata Analysis* in September 2008, CSEC resumed activities. There were such activities during the period under review, all of which the Commissioner examined.

Over the next three months, it is anticipated that the Commissioner will complete five other reviews:

- SIGINT MAs (2007-2009)
- MAs (2008-2009)
- Disclosures of Canadian Identity Information to Government of Canada Clients
- SIGINT Management
- CSEC's activities related to

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TALKING POINTS

Commissioner's Report

- Now that we have covered the CSE Commissioner's role and your part in our interactions, I am going to brief you on the latest report produced by the Commissioner, which was sent to the Minister – with a copy to your office - on 16 December 2010. The review examined CSEC's activities conducted during the period of October 2008 to October 2009. As you may have already noted, the report is very favourable.
- The Commissioner's primary objectives for the review were to:
 - acquire detailed knowledge of and document CSEC's new approach to activities
 - assess whether the activities complied with the law; and
 - assess the extent to which CSEC protected the privacy of Canadians in carrying out the activities.
- The review did not contain any negative findings or recommendations. I am pleased to note that the review found that CSEC conducted the activities in accordance with the law, Justice advice and Ministerial Directives.
- In addition, the review found that CSEC:
 - has appropriate policies and procedures that govern the activities;
 - managers and personnel are aware of, and comply with, these policies and procedures; and
 - has the means to monitor compliance with policies and procedures, maintain the integrity of these activities, and account for important decisions and information.
- The review also concluded that the were appropriately authorized under part (a) of the mandate. Moreover, the Commissioner noted that, with the changes made to these activities as outlined in OPS-1-10, he has no questions as to whether such activities would be more appropriately authorized under part (c).
- Given the Commissioner's view that these activities may affect the privacy of Canadians, he has asked to be made aware of the number of such conducted annually and will likely review samples on a regular basis.
- I note that the number of conducted during the period under review was unusually low, due to the fact that we had only recently restarted the activity. Over the course of the past year, CSEC has conducted significantly more and will continue to do so. These activities have been conducted in a similar manner to those subject to this review.
- We are preparing a letter of response on this review to the Minister of National Defence for your signature.

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Communications Security
Establishment Canada

Centre de la sécurité
des télécommunications Canada

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Your File Votre référence

Our file Notre référence
CCSE/006-11
652208

June 15, 2011

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister:

You received an executive summary letter from the CSE Commissioner, dated 16 December 2010, regarding a review entitled *A Review of CSEC*

Activities I am writing to seek your concurrence on a proposed response to the Commissioner, prepared by the Communications Security Establishment Canada (CSEC).

I am pleased to highlight that during the course of the review, the Commissioner found that CSEC complied with the law and with Justice Canada advice. As well, the Commissioner noted that CSEC's activities were conducted in accordance with Ministerial Directives on *Accountability Framework, Privacy of Canadians, Collection and Use of Metadata, and Support to Law Enforcement and National Security Agencies*.

In reviewing these activities, the Commissioner found that related policies and procedures were appropriate, well-known within the relevant CSEC activity areas, and adhered to by CSEC personnel. Further, the review determined that CSEC's management control framework for these activities is appropriate. The review made no recommendations for further improvements to the processes and activities that it examined.

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While there were no recommendations included in the review report, I have enclosed for your consideration a draft letter of response to the Commissioner. As always, I am available should you wish to discuss any aspect of this review.

Sincerely,

John Adams
Chief

Enclosure

I concur:

Stephen Rigby
National Security Advisor to the Prime Minister
Privy Council Office

cc: Mr. Robert Fonberg, Deputy Minister, National Defence

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The Honourable Robert Décary QC
Commissioner of the Communications Security Establishment
90 Sparks Street, Suite 730
P.O. Box 1984, Station B
Ottawa, Ontario
K1P 5B4

Dear Commissioner:

I am writing to respond to your 16 December 2010 report entitled *A Review of CSEC Activities*. It was reassuring to note that during the course of the review you found that CSEC complied with the law, ministerial requirements, and operational policies.

I note that this review resulted in only positive findings and did not produce any recommendations for further improving the examined activities. Since this review focused on fairly recently resumed activities, I was pleased to see that the supporting processes were deemed fully satisfactory.

Sincerely,

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence

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Communications Security
Establishment Canada

Centre de la sécurité
des télécommunications Canada

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Your File Votre référence

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Charged to Chargé à _____	

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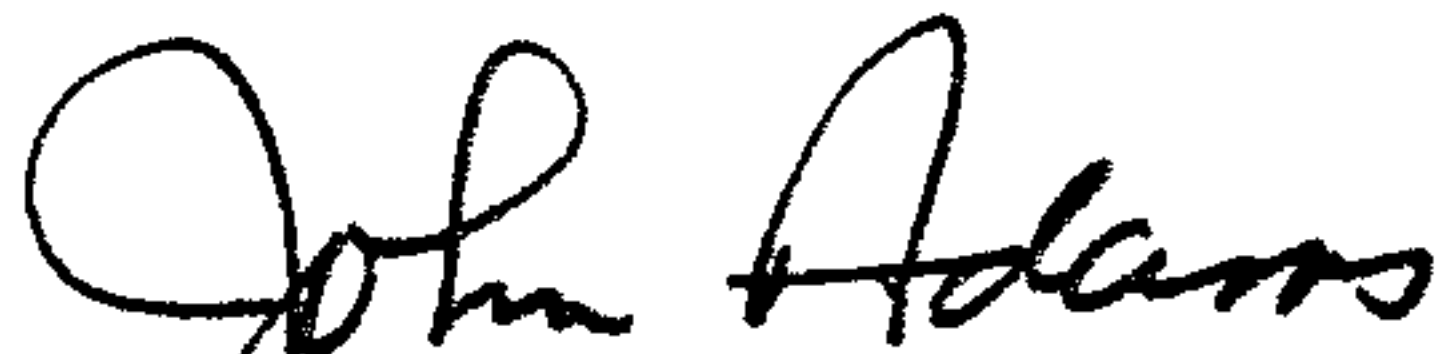
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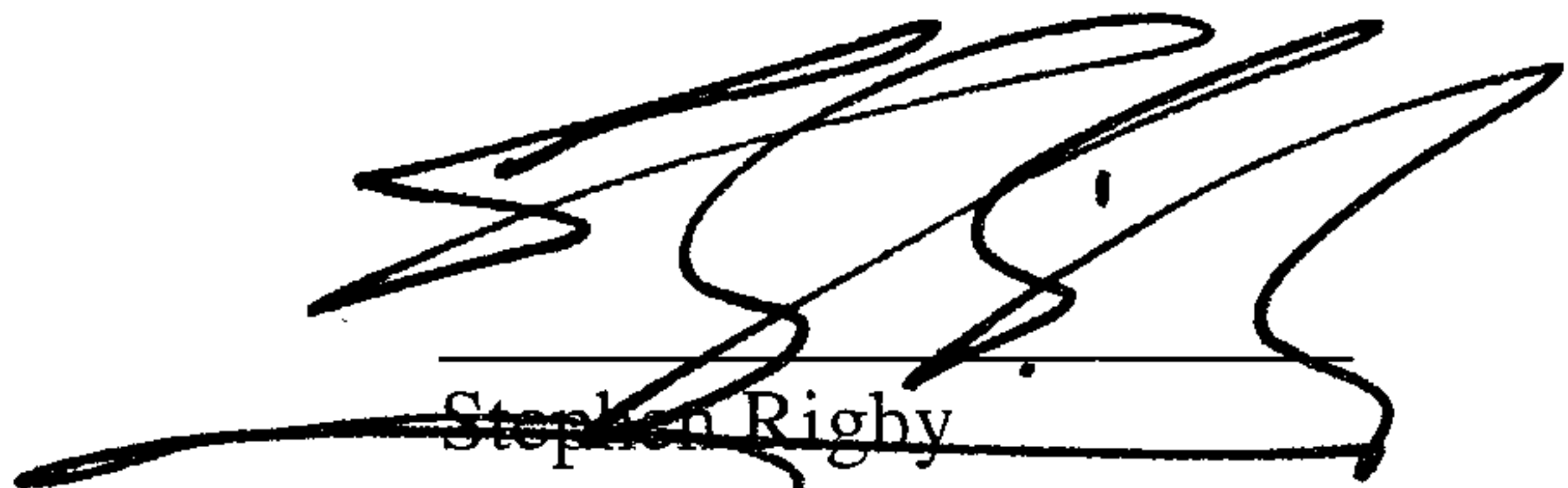
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Sincerely,


John Adams
Chief

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I concur:


Stephen Rigby
National Security Advisor to the Prime Minister
Privy Council Office

cc: Mr. Robert Fonberg, Deputy Minister, National Defence

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Minister
of National Defence



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Ministre
de la Défense nationale

Ottawa, Canada K1A 0K2

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FEB 09 2011

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Commissioner of the Communications Security Establishment
90 Sparks Street, Suite 730
P.O. Box 1984, Station B
Ottawa, Ontario
K1P 5B4

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Sincerely,

The Honourable Peter MacKay, P.C., M.P.
Minister of National Defence

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Canada

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ADVICE FOR THE MINISTER

CSEC ISSUES

ISSUE: Why is the government putting national security at risk with the LTA project by hiring contractors to work at CSEC? Why is the government allowing the loss of more than 90 Public Service positions by hiring contractors rather than full-time public servants? Why was Plenary Properties, a foreign-owned Australian company, selected to construct the new facility for Canada's most secret intelligence organization? What is the government doing to ensure that Government of Canada computers and information are protected from cyber-attacks?

IF PRESSED ON IMPACT OF LONG-TERM ACCOMMODATION (LTA) PROJECT ON NATIONAL SECURITY

- National security is in no way at risk as a result of this project. All CSEC staff, including contractors, are subject to the appropriate security screening process and clearance level.
- Any private contractor hired for the new facility who will have access to sensitive information will be designated as a Person Permanently Bound to Secrecy and subject to the *Security of Information Act* in the same manner as CSEC employees.
- Contractors have been employed by CSEC for many years. At any given time, there are more than 100 contractors working at CSEC. All contractors have the appropriate security clearances, have sworn the appropriate oaths of secrecy and have signed the appropriate documents to be employed by CSEC.

IF PRESSED ON IMPACT OF LTA PROJECT ON CSEC EMPLOYEES' JOB SECURITY

- No CSEC employee will lose employment as a result of this public private partnership.
- The Chief of CSEC is fully committed to ensuring that any employee whose job is affected by the move to the new facility four to five years from now is guaranteed another position at CSEC or elsewhere within the federal public service.
- In fact, this project will create jobs – approximately 4000 construction jobs will be created as a result of this project.

IF PRESSED ON PLENARY GROUP (CANADA) AND CANADIAN BUILDER PCL CONSTRUCTION

- Plenary Group, the Plenary Properties consortium lead, is a Canadian company with offices in Toronto, Vancouver and Edmonton.
- Plenary Group has an Australian sister company with industry-leading experience in Australian-based public-private-partnership projects; however, this company is not involved in the project.
- Plenary Group has a proven track record of creating Canadian jobs. This project is expected to generate upwards of 4,000 jobs for Canadians, 99 percent of which are expected to be Canadian.
- With a project of this size and complexity, it is only reasonable to expect that the consortium would be Canadian-led and multinational in nature.

IF PRESSED ON CYBER COMPROMISES OF GOVERNMENT OF CANADA COMPUTER SYSTEMS

- CSEC provides the Government of Canada, departments and agencies advice, guidance and services on the protection of electronic information and infrastructures.
- CSEC is recognized as a key partner in Canada's *Cyber Security Strategy*.
- While the Government does not comment on the specific operational details of security-related incidents, I can assure you that CSEC continues to work with departments in addressing unauthorized attempts to access their networks.

IF PRESSED ON OCSEC ANNUAL REPORT, 2010-11

- As the Communications Security Establishment Commissioner confirmed in his annual report, CSE activities that he examined this past year were all in compliance with the law, ministerial requirements, and CSE policies and procedures.
- The Commissioner made a small number of recommendations, and expressed satisfaction that CSEC addressed deficiencies identified in previous annual reports.

IF PRESSED ON CSEC COLLECTION OF CANADIANS' PERSONAL INFORMATION

- CSEC does not target the communications of Canadians anywhere and has legislative measures in place for the protection of the privacy of Canadians.
- As the CSE Commissioner has noted in his 2010-2011 report, the focus of CSEC activity is foreign intelligence.
- The CSE Commissioner highlighted that all reviewed CSEC activities were authorized and carried-out in accordance with the law, ministerial requirements and CSEC's policies and procedures.
- In his report, the Commissioner highlights the degree of transparency and cooperation displayed by CSEC, as well as CSEC's genuine concern for protecting the privacy of Canadians.

BACKGROUND

PLENARY GROUP CONSORTIUM

- The consortium includes 11 companies, 7 of which are wholly Canadian and 4 are incorporated in Canada.
- Plenary Properties earned the highest score in all sections of the evaluation criteria.
- Plenary Properties received a bond rating of A, the highest grade of any PPP ever awarded in Canada.

CYBER SECURITY

- The Communications Security Establishment Canada has a mandate to provide advice, guidance, and services to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada.
- In October 2010, the Government released *Canada's Cyber Security Strategy*. The *Strategy* has three pillars:
 - o Secure government systems;
 - o Partnering to secure vital cyber systems outside the federal government; and,
 - o Helping Canadians to be secure online.
- CSEC is a key player in the pillar to Secure Government Systems.
- Budget 2010 included an investment of \$90 million over five years to implement the *Strategy*.
- The *Strategy* states that with its unique mandate and knowledge, CSEC will enhance its capacity to detect and discover threats, provide foreign intelligence and cyber security services, and respond to cyber threats and attacks against Government networks and information technology systems.
- The *Strategy* states that Public Safety will coordinate implementation of the *Strategy*.

OCSEC ANNUAL REPORT 2010-11

- The Commissioner's 2010-2011 Annual Report noted that "when other means have been exhausted, CSEC may use information about Canadians when it has reasonable grounds to believe that using this information may assist in identifying and obtaining foreign intelligence."
- Citing the above, a 29 July 2011 Globe and Mail article referred to CSEC using "information about Canadians... in identifying and obtaining foreign intelligence."
- The story noted these activities were halted and resumed after "major changes."
- The suspension was initiated by the Chief of CSEC, in order to make absolutely certain that the activities in question were compliant with Canadian privacy laws as well as with CSEC's own policies and procedures.
- In consultation with the Department of Justice an internal review determined that these activities were indeed in compliance with the law but it was felt that certain CSEC policies should be clarified. This was done and CSEC resumed these activities.
- As an independent organization, the Office of the Communications Security Establishment Commissioner can review all activities carried out by CSEC for lawfulness, and must review all activities carried out under Ministerial Authorizations.

MEDIA BACKGROUND

- On 26 Sep 11, media reported that the Government was warned prior to the cyber compromises of January 2011 that a hacking attempt could possibly occur. According to this reporting, documents obtained by The Canadian Press say the Treasury Board Secretariat and Finance departments were notified of "harmful activity" on 24 Jan by the agency that oversees communications security in Canada.
- On 21 Oct 11, media reported that the Chief of CSEC, Mr. John Adams, is expected to step down from his post in early 2012. Media reported that no replacement has been named at this time.
- On 31 Oct 11, media reported on the relationship between CSE and CSIS. Coverage noted that CSIS works very closely with CSE and that while CSE's intelligence provides CSIS with investigative leads, information collected in the course of CSIS investigations enhances CSE's ability to respond to cyber-threats.

- On 19 Dec 11, media reported that the new Communications Security Establishment Canada's (CSEC) headquarters will have filtered drinking fountains that will cost \$200 each. The article also noted that the Union of National Defence Employees agrees that CSEC needs a new building, but has raised questions about why the complex has to be so elaborate even as DND is facing cuts.

Responsible Principal(s): CSEC

Contact: Adrian Simpson, Spokesperson, CSEC, 613-949-2218

Sarah Pacey (D Parl A 2-2), 995-8331

19 December 2011

ADVICE FOR THE MINISTER

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- In his report, the Commissioner highlights the degree of transparency and cooperation displayed by CSEC, as well as CSEC's genuine concern for protecting the privacy of Canadians.

IF PRESSED CSEC'S PLACE IN GOVERNMENT

- The Communications Security Establishment Canada (CSEC) provides critical foreign signals intelligence and information technology security support to the Government of Canada.
- CSEC has doubled in size since its legislative mandate was established in 2001 to address a growing number of security threats to Canada and Canadians.
- This administrative realignment maintains the association of CSEC with the National Defence Portfolio and establishes a reporting structure similar to comparable large agencies. There is no impact on the mandate or operations of CSEC.

IF PRESSED ON OVERSIGHT OF CSEC/ROLE OF THE COMMISSIONER

- The independent CSE Commissioner can review all activities carried out by CSEC and must review all activities carried out under Ministerial Authorizations.
- For the past 16 years, including in his most recent report, the Commissioner has reported that the examined activities of CSEC complied with the law.
- CSEC does not target the communications of any person in Canada or Canadians anywhere.
- The Commissioner has confirmed that CSEC has measures in place for the protection of the privacy of Canadians, as required by legislation.

IF PRESSED ON CONTINUED ACCOUNTABILITY FOR CSEC

- CSEC appeared for the first time in the Main Estimates this year as a result of the organization's new status as a stand-alone agency, within the National Defence portfolio. Prior to this, CSEC was included in the Estimates of the Department of National Defence.
- CSEC will continue to be subject to applicable Government of Canada financial policies and review by the Office of the Comptroller General, Treasury Board Secretariat and the Auditor General.
- The recent regulatory amendment to quarterly financial reporting ensures that the change in CSEC's status does not create new requirements that would risk unintentional disclosure of information to Canada's adversaries on the operational capabilities of CSEC.

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BACKGROUND

PLENARY GROUP CONSORTIUM

- The Plenary Group Consortium includes 11 companies, 7 of which are wholly Canadian and 4 are incorporated in Canada.
- Plenary Properties earned the highest score in all sections of the evaluation criteria to choose a private partner for this project and has received a bond rating of A, the highest grade of any Public-Private Partnership ever awarded in Canada.
- The Union of National Defence Employees had raised concern over the LTA project impacting national security and CSEC employees' job security.
- Security is the core of CSEC's business and has been a consideration from the outset of the project. As such, stringent security measures are in place to protect the integrity of the facility as well as the information it protects.
- All CSEC staff, including contractors, are subject to the appropriate security screening process and clearance level. This will not change.
- CSEC required a modern infrastructure to keep pace with the evolving threat environment:
 - o Since 2001, CSEC's workforce has nearly doubled in size. CSEC faces increasing space and infrastructure constraints at its current location, which affects CSEC's operational capabilities and ability to keep up with rapid technological changes.
- Power requirements will soon exceed current capacity to supply high-performance, critical-to-the-mission supercomputers required to store data and defend against sophisticated cyber threats.

LONG-TERM ACCOMMODATION

- A \$4.1 billion contract for the LTA project was awarded to Plenary Properties in 2010.
- It was determined that the Public-Private Partnership approach, which involves a fair and competitive process, delivers the best value for Canadian taxpayers.
- This contract includes \$867 million for the construction of the facility and its design, and all facilities maintenance and services required over the 30-year operating period.
- The Public-Private Partnership project agreement makes the private sector partner responsible for any cost over-runs and design deficiencies and sets financial penalties for delays and performance failures over the 30-year life of the contract.
- At this time, the project is on schedule and on budget, and CSEC expects to move to its new facility in 2014.

CYBER SECURITY

- The Communications Security Establishment Canada has a mandate to provide advice, guidance, and services to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada.
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- As an independent organization, the Office of the Communications Security Establishment Commissioner can review all activities carried out by CSEC for lawfulness, and must review all activities carried out under Ministerial Authorizations.

PLACE IN GOVERNMENT

- The CSEC place in government has changed with the security and intelligence posture of the Government of Canada. CSEC was originally established during the Cold War as a branch of the National Research Council. CSEC has been part of the National Defence portfolio since 1975.
- Through the 2001 *Anti-terrorism Act* amendments, the mandate of CSEC was established in legislation. Since that time, the agency has nearly doubled in size to almost two thousand employees.
- Until recently, CSEC reported to the Minister of National Defence through two deputy heads – the National Security Advisor on policy and operations and the Deputy Minister of National Defence on financial and administrative matters.
- Effective 16 November 2011, CSEC will be established as a stand-alone agency reporting directly to the Minister of National Defence with the Chief, CSEC as Deputy Head.
- This change is to be implemented through an Order in Council designating CSEC as a department, for the purposes of the *Financial Administration Act* by being added to Schedule 1.1 as a branch of the federal public administration. This thereby designates the position of Chief as the Deputy Head for CSEC.

This administrative realignment has no impact on the mandate or operations of CSEC. There is also no impact on the role of the CSE Commissioner. The new CSEC reporting structure is similar to that of other large agencies, such as CSIS.

OVERSIGHT AT CSEC

- CSEC is working with the Department of Justice to develop proposals for consideration by the government on technical legislative amendments that would address the Commissioner’s concerns. This process involves complex issues and consultations and takes time. The Commissioner has noted that he has agreed to use the Department of Justice’s interpretation until amendments to the *National Defence Act* are made.
- The CSE Commissioner clearly states that, with respect to CSEC’s collection activities under Ministerial Authorizations: “Based on the information reviewed and interviews conducted, I found that CSEC’s activities were authorized and carried out in accordance with the law, ministerial requirements, and its operational policies and procedures.” (pp. 11, 12, 14, 16, 17, 18, 20)
- The Commissioner goes on to state that: “Personnel responsible for the collection and management of intelligence activities were interviewed and found to be knowledgeable about the legislative authorities, policies and procedures that govern CSEC’s collection.” (p. 12) And in the context of a specific review of activities he adds: “CSEC has also taken specific measures to protect the privacy of Canadians.” (p.20)

MEDIA BACKGROUND

- On 26 Sep 11, media reported that the Government was warned prior to the cyber compromises of January 2011 that a hacking attempt could possibly occur. According to this reporting, documents obtained by The Canadian Press say the Treasury Board Secretariat and Finance departments were notified of "harmful activity" on 24 Jan by the agency that oversees communications security in Canada.
- On 21 Oct 11, media reported that the Chief of CSEC, Mr. John Adams, is expected to step down from his post in early 2012. Media reported that no replacement has been named at this time.

- On 31 Oct 11, media reported on the relationship between CSE and CSIS. Coverage noted that CSIS works very closely with CSE and that while CSE's intelligence provides CSIS with investigative leads, information collected in the course of CSIS investigations enhances CSE's ability to respond to cyber-threats.
- On 13 Jan 12, media reported that John Forester has been appointed as the new Chief of CSEC.
- On 18 Apr 12, media reported that CSEC will now be a standalone federal agency and not under DND's umbrella. It was reported that this will force CSEC to disclose its budgets and provide regular public reports. Some critics, including Liberal Party Justice critic Marc Garneau, reportedly noted their concerns that there is insufficient civilian oversight over CSEC's activities. The article also noted that CSEC's new headquarters will cost \$880 million.
- On 23 Apr 12, media printed a letter from the Director of Communications at CSEC highlighting that CSEC respects the rights and privacy of Canadians and that by law does not direct its activities at Canadians or any person in Canada. As well, it reaffirmed CSEC's place in government, noting that it continues to report to the MND and be subject to a number of external review mechanisms.
- On 30 Apr 12, media reported again that CSEC is now a standalone agency. The article noted that CSEC has more than doubled in size since Sept. 11, 2001, with 1,950 staff, and a budget of \$350 million in 2012 and compared this transition to when CSIS was taken out of the RCMP and made an independent agency.
- On 07 May 12, media reported that the government has exempted CSEC from reporting its quarterly financial reports to Parliament, noting that this comes at a time when CSEC is constructing a multi-million dollar complex in Ottawa and is now an independent agency that is separate from DND. It was reported that NDP MP Jack Harris is calling for CSEC to be more transparent and accountable to Parliament and taxpayers.

Responsible Principal(s): CSEC

Contact: CSEC Media Relations, 613-949-2218

Sarah Pacey (D Parl A 2-3), 995-8331
08 May 2012