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NEW ZEALAND. Inspector-General of
Intelligence and Security.

Annual report 1998/99.

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PRIME MINISTER

22 December 1999

ANNUAL REPORT OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY FOR FINANCIAL YEAR 1998/99

I have reviewed the Annual Report of the Inspector-General of Intelligence and Security for the financial year ending June 1999.

In accordance with Section 27(3) of the Inspector-General of Intelligence and Security Act 1996 (the Act), I confirm that no matters, as set out in Section 27(4) of the Act, have been excluded from the report.

There are no matters to bring to the attention of the House.

A handwritten signature in cursive script, reading "Helen Clark".

Prime Minister
13 December 1999

INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 1999

This is the third annual report of the Inspector-General of Intelligence and Security. It is made in compliance with the statutory requirement upon the Inspector-General to furnish a report of his activities at the end of each year ending with 30 June. This report deals with the year ended 30 June 1999. The mandate and function of the Inspector-General are described in an appendix to this report.

The year in brief

1. The year under review has been one of continuity. The office has remained as before, a part-time one. There has been no growth in the business of the Inspector-General. Although there are differing views about this, I believe that it is a good sign. The fact there are very few complaints and little need for any inquiry into the activities of the New Zealand Security Intelligence Service or the Government Communications Security Bureau indicates, I believe, that the performance of their activities does not impinge adversely on New Zealand citizens. That has certainly been my conclusion as I have gone about my supervisory functions, as well as undertaking the inquiries which have been occasioned during the year.

2. I have remained throughout the period of my office since December 1996 as a lone functionary. There has been no need to appoint any staff. I have been satisfied that I have been able to undertake my duties satisfactorily on my own. Administrative services have been efficiently provided through the Domestic and External Security Secretariat (DESS).

3. During the year I have received two complaints and dealt with three inquiries. One of these inquiries was a continuing inquiry initiated by the request of the Minister in Charge of the Government Communications Security Bureau in the previous year. The second, again concerning the GCSB, was commenced during this last year by the request of the Minister. The third was an inquiry which I commenced on my own initiative with the approval of the Minister in Charge of the New Zealand Security Intelligence Service. The Minister in both cases is the Prime Minister. These inquiries were completed during the year. Of the complaints, both were commenced during the year under review. They concerned the activities of the NZSIS. Neither were concluded by 30 June 1999.

4. During the year I spent some time in consideration of the legislation which was proposed to amend the New Zealand Security Intelligence Service Act 1969. I made submissions on the two Bills which were introduced and later enacted. These submissions were made to the Minister-in-Charge and I appeared before the Security Intelligence Committee in two occasions.

5. I spent some time in the course of the year on the general scrutiny and supervision of the two Intelligence Services and in particular in examining the interception warrants authorised by the Prime Minister. I attended the second International meeting of Inspector-Generals of Intelligence and Security in Ottawa, Canada, at the end of June 1999.

6. The year saw some continuing activity in the case brought by Mr Choudry against the NZSIS claiming damages for the wrongful entry into his residence in July 1996. That had been the subject matter of a complaint made to me by him and another person. I had concluded that the entry was lawfully authorised on a proper construction of the legislation, it being undertaken in terms of a properly authorised interception warrant. As a result of the Court of Appeal finding in the case that the entry was unauthorised, the first Bill which became the New Zealand Security Intelligence Service Amendment Act 1999 was introduced into the Parliament. Although I have not been called upon to reconsider the complaint made I have kept the matter under consideration. Since the end of the year under review Mr Choudry's case has been settled and the matter may be at an end.

7. In my previous report I have mentioned the letters of inquiry and grievance from persons who have appeared sometimes to be affected by irrational beliefs and obsessions. These I have always considered with particular care because it is well known that even in an unlikely case there may be grounds of justified complaint. I am happy to say that I have received fewer of such letters of inquiry and

grievance in this last year. I have not found any justified complaint arising in this class of inquiry and grievance.

Complaints

8. In January 1999 I commenced an inquiry into a complaint by a person of foreign nationality but who had been granted permanent residence in New Zealand in June 1993. He had married shortly before a New Zealand citizen who was of the same original nationality as the complainant. The complainant applied in 1996 for New Zealand citizenship. The application was declined by the Minister of Internal Affairs on grounds involving national security and national interest. The reason for this was an adverse comment by the NZSIS to which the application had been referred. In the course of my inquiry I obtained a report from the NZSIS, examined the files pertaining to this matter and conducted an interview with the complainant who was supported by his Barrister, his wife and three other persons who spoke to his good character. The inquiry was not concluded by the end of the year.

9. In February 1999 I commenced an inquiry into a complaint by Nga Kawhakamarama I Nga Ture, a community law centre providing legal advice to Maori, that they had been advised that their telephone conversations were being intercepted by devices outside their office building. This matter was brought to public attention by the Senior Solicitor of the Law Centre in the course of the

public submissions to the Security Intelligence Committee on the first amendment bill to the NZSIS Act. I received a report on the matter from the NZSIS. I sought further information from the community centre. I considered that what was a bare assertion of an allegation at third hand was not enough to warrant an inquiry. I have received no further information being advised by the centre that the person who originated the assertion did not want to be involved in any investigation. It was not possible therefore for any further details to be obtained or to proceed with the inquiry. It was not proper for security reasons to comment on who or what is or may be subject to covert investigation or interception by an Intelligence Service. The ground for that attitude is that if there was release of detailed information about any specific operation, the effectiveness of those operations and other future operations could be compromised. Even the knowledge that particular organisations are not of concern can give information to hostile intelligence organisations as to the methods of the Service. Since the end of this year I have decided not to inquire into that complaint and have concluded the matter accordingly.

Inquiries

10. In my Annual Report 1998 I recorded that I had been requested to make an inquiry into the internal rules of the Government Communications Security Bureau in these terms:

- a. Advisability and appropriateness of the GCSB's internal rules for the collection and reporting of foreign communications;
- b. The adequacy of the safeguards for ensuring that only foreign communications are collected.

The Prime Minister, the Rt Hon J B Bolger, in making his request recorded that he was seeking reassurance concerning the operating methods, procedures and rules that the GCSB has in place to ensure that its operations and activities are at all times, lawful, proper and of no adverse or improper impact on the lives of New Zealand citizens.

I reported then that I was unable to conclude the matter. I had made a preliminary report which was made public on 24 June 1998. The reason for this way of dealing with the matter was that in the first place the GCSB was in the process of a review of its collection and reporting rules. The second reason was that the Bureau, under extended authority, was proceeding to prepare to undertake the collection of foreign voice communication. Until I could examine the reviewed rules and consider the procedures for the collection and reporting of the intelligence under those amended rules and in light of the foreign voice communication authority, I could not complete the report.

11. I made my final report on this matter on 27 April 1999. I was of the view that the wording of the rules had been improved, clarifying the policy and the practice. The new rules apply to all types of information collected, processed and disseminated by the GCSB. That included foreign voice communication so that that was subject to the same rules and to the same entrenched concern that has pervaded the day to day operations of the GCSB. That concern, affecting every member of the staff involved in the operations of the Bureau, is the obligation to comply with the rules. I inspected and considered the operation of foreign voice communication collection. That operation includes safeguards to ensure that a communication to be collected and reported on is a foreign communication and that the procedure complies with the collection and reporting rules. That process of checking is repeated. I came to the conclusion that the GCSB had formulated and was carrying out a well-designed process effective to ensure that the collection and reporting rules apply and that there are effective safeguards to achieve the purpose and policies of these rules.

I was satisfied that the collection and reporting rules are valid and appropriate and have been improved. I was satisfied that these rules and their application by the GCSB and its staff were effective to ensure that the GCSB collect and reports on foreign communications only. There was no adverse or improper impact on the lives of New Zealanders.

12. In August 1998 I was requested by the Prime Minister as the Minister-in-Charge of the GCSB to make a further inquiry into the Bureau and in particular with a focus on the compliance by it with the law of New Zealand. The express terms of the request were as follows:

“[to] enquire into the matter in which the signals intelligence collection operations of the GCSB generally – and specifically the Waihopai and Tangimoana facilities – are conducted, paying particular regard to:

- a. the extent to which the GCSB’s collection and reporting activities are driven by the foreign intelligence requirements of the New Zealand Government; and
- b. the arrangements whereby New Zealand’s SIGINT facilities are used to meet the intelligence requirements of our intelligence partners.”

In expansion of this request the Prime Minister recorded that she sought reassurance that:

- “a. New Zealand’s SIGINT collection resources are directed principally to meeting the foreign intelligence needs of the New Zealand Government (rather than, as alleged, the intelligence needs of our partners);
- b. New Zealand retains national control over its SIGINT collection and reporting functions; and

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c. the extent of the GCSB's cooperation with its international intelligence partners is reasonable and consistent with New Zealand's national interests."

At base and having regard to the practicalities the Prime Minister sought assurance that the New Zealand foreign signals intelligence operations are conducted in such a way as to promote our national interests in the broadest sense.

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Again I made a report on this matter dated 28 April 1999. I came to my conclusion on this matter by making a number of findings which were based on my discussions with GCSB staff, perusal of the documents that I had been provided with by them and witnessing actual procedures. I was unable to check some of the technical matter but I was satisfied from the assurances I had been given from the staff and the corroboration of those by other material available to me. The essence of my conclusions are as follows:

New Zealand's SIGINT collection facilities are managed and controlled by GCSB alone for the principal purpose of meeting New Zealand's foreign intelligence needs.

The facilities are useful to and are accessible by the intelligence agencies of New Zealand's intelligence partners. Access to the facilities and to the intelligence material collected is at all times under the control and supervision of GCSB.

Care is taken to ensure that private communications of New Zealand citizens are not intercepted and are not available to the intelligence partners.

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There is a substantial balance in favour of New Zealand and its intelligence requirements in the collaboration and sharing of information and intelligence between the partners.

The cooperation between the GCSB and its intelligence partners, both in its procedures and operations, adequately protects the privacy interests of New Zealand persons and entities and is beneficial to New Zealand's national and international interests.

In that report I took the opportunity to refer to the allegations that have been made that private communications of New Zealanders are targeted by the Bureau. In this context the Bureau's activities have been compared to a vacuum cleaner which indiscriminately intercepts unimaginably vast quantities of communications. As I have already reported in my inquiry into the collection and reporting internal rules of the GCSB, the focus is on foreign communications and it is a cardinal rule that it does not deliberately intercept the communications of New Zealand citizens or collect information of a domestic nature. I was satisfied, and said so, that the GCSB is scrupulous in ensuring that its activities comply with these rules. I am sure that the GCSB operations have no adverse or improper impact on the privacy or personal security of New Zealand citizens. I am satisfied too, that our Intelligence partners are as concerned about the privacy and security of New Zealand citizens as their own.

13. In November 1998 I commenced an inquiry into the situation of a person of foreign nationality who had been refused a grant of permanent residence because of an adverse comment by the NZSIS. This was not in the form a complaint by the person himself but was initiated by me with the approval of the Prime Minister following the approaches of Mr Matt Robson MP. This person arrived in New Zealand in December 1991 and made an application for a grant of refugee

status in March 1992. That application was originally declined but the Refugee Status Appeal Authority in 1994 allowed the Appeal, declaring that the appellant was entitled to the status of refugee. In making his decision the Authority described the case as a strong case of political persecution. He was satisfied that the applicant before him had suffered police brutality, arbitrary arrest and prosecution on false charges during 1987 and 1988. This, the Authority found, constituted persecution and was based upon the appellant's support and holding of office in the All Indian Sikh Student Federation (AISSF). It is the person's participation in this and other associated organisations which is at the heart of my inquiry and was the ground for the NZSIS comment which was the basis of the Minister's refusal for permanent residence.

14. The AISSF and other associated organisations share the goal of many Sikhs for the establishment of an independent Sikh state in the Punjab to be known as Kahlistan. This movement has been associated with extremist activities which have been part of a terrorist campaign perpetrating political assassinations and random and indiscriminate killings of Hindus and Sikhs. The Indian authorities have reacted severely and there have been many deaths and arrests in the attempted control and defeat of the terrorist campaigns. The complainant, which is a convenient way to refer to him, was a member of and, at one time, the President of an organisation in New Zealand which has been associated with the AISSF. Arising out of that association, the NZSIS formed the view that the

complainant was responsible for organising support and funding for overseas organisations which use acts of terrorism to achieve their goals.

15. In the course of my inquiry I obtained a report from the Director of Security and personally reviewed the material which has been available to the NZSIS in this matter. I discussed the subject of the inquiry with the Director of Security and other officers of the NZSIS. I went to Auckland and met with the complainant and Mr Robson MP and discussed with them the matters involved in the inquiry. My conclusion was that the NZSIS was justified in reaching the opinion that it did. I gave anxious consideration to the matter as a whole because of the particular circumstances of the complainant as a refugee and his de facto residence in New Zealand for upwards of seven years. Apart from the activities and associations which the NZSIS commented upon the complainant has taken part in community affairs and has lived in this country without coming to adverse notice. There are questions of humanitarian concern affecting the complainant and his family and I did not ignore these. It was not of course for me to usurp the function of the Minister of Immigration or indeed to suggest how he might exercise his discretion. My inquiry was focussed on the actions of the NZSIS. I came to the conclusion in the end that the NZSIS was justified in reaching the opinion that it did and that it was equally justified in giving that advice to the Minister. I concluded that this could not be said to be a trivial matter or one which could have insignificant effect in New Zealand's overall security interests.

General Scrutiny

16. In the course of the year I continued my review of the effectiveness and appropriateness of the procedures of New Zealand Security Intelligence Service to ensure compliance with the statutory conditions for the issue and execution of interception warrants by the Service. In making this review I did so not only on the basis of the formal legality of the procedure, that is to say the compliance with the statutory requirements of the Act, but I also considered the general justification for the warrants, the propriety of them and the safeguards, if any, for any intelligence information which may not in the end be related to national security.

I have been satisfied on my examination of each of the files that the warrant has been issued in strict compliance with the statutory conditions and has been appropriately justified on the grounds of national security.

17. In my last annual report I mentioned that I wanted to consider in greater depth the maintenance of records within the NZSIS. I spent some time considering the Service's procedures for information management and have examined their filing system and have watched their review procedure in operation. I am satisfied that there is adequate security within the system to ensure that files are released and made available on a strict 'need to know basis' and that there is a record kept of the movement of files which can be checked at any time. There are a number of

factors which bear on the control and maintenance of files, apart from the merely administrative one of finding sufficient secure space for the holdings. I am satisfied that the security of holding is efficient and effective. Subject to the factors under the provisions of the Archives Act 1957 and any authorised deferral of deposit there is a need to retain files for historical purposes but also for operational purposes and for long periods. As has recently been in the news there can be, for example, disclosures which may have effect on the lives and reputations of persons decades after the event. It is important to retain information which may have value in the future. Although a particular activity or concern may abate or even disappear it is possible that it may be resurrected and past information may be useful for on-going or future operations. There is an effective procedure for the progressive and continued vetting of files. I intend to keep this matter under review in the future.

Statutory Concerns

Immigration Amendment Bill

18. In my last annual report I noted that I had made a number of comments on the preliminary proposals and the subsequent drafting instructions for new procedures for dealing with sensitive security issues in immigration through the IGIS. I made submissions to the Minister on the draft Bill when it was made public and included in my submissions a number of general comments about the

Bill. I took part thereafter in some discussions with the Director of Security and officials from the New Zealand Immigration Service. The Bill in an amended form was enacted as the Immigration Amendment Act 1999 on 1 April 1999. Later I gave consideration to the forms which the New Zealand Immigration Service propose to use in the Appeal procedure in which the Inspector-General is to take part.

New Zealand Security Intelligence Service Amendment Bill

19. This Bill was introduced to ensure the continued effectiveness of the New Zealand Security Intelligence Service as explained in the explanatory note to the Bill. The measure was necessary because of the decision of the Court of Appeal in Choudry's case. The effect of the Bill was to confer on officers of the Service acting under interception warrants, express powers to enter into a place which was defined to include lands, buildings, dwelling houses, vehicles and other things. There was also proposed express power to install a device to remove it and to seize material in a place. I made submissions to the Intelligence and Security Committee on the Bill and attended on the Committee in support of my submissions and to answer questions upon them. In the course of the passage of this Bill through Parliament, the Director of Security undertook a review of its systems and the execution of interception warrants. I examined that review and in particular revisited the interception warrant activities of the Service from the date of the creation of my office in July 1996. I was satisfied that the Director of

Security had taken appropriate steps to ensure that the current and future operations would not contravene the law as declared by the Court of Appeal pending the passing of the Bill. On completion of my inquiries I was satisfied that it was not necessary to take any further action. I reported accordingly to the Prime Minister. In the course of the public submissions on this Bill there were a number of further amendments proposed but it was then decided that it would be more appropriate to deal with these further matters in another Bill. The first amendment was duly passed and became law.

20. There was then introduced into the House, the New Zealand Security Intelligence Service Bill (No.2). I did not consider it necessary or appropriate to offer any further submissions to the Intelligence and Security Committee on this second amendment Bill. I considered that the substantive matters in the Bill were essentially questions of policy upon which as a matter of principle I should not comment unless it appeared to me that the proposals were not in compliance with general law or might lead to inappropriate activity by an intelligence and security agency. Neither of those conditions applied to the second Bill. I did make some comment as to some drafting points. At the invitation of the Intelligence and Security Committee I attended the Committee when it heard further submissions on the Bill. The Bill was later passed and became law.

21. That second amendment Act changes the definition of security so far as it relates to New Zealand's international or economic well-being and creates a new office

of Commissioner of Security Warrants who will take part jointly with the Minister in charge of the Service in the issue of domestic interception warrants. The effect of these new provisions will entail some amendment to the practice and procedures of the Service. I have made some comment about that and will be reviewing those practices and procedures with a view to ensuring that there is compliance with the law as it is now amended.

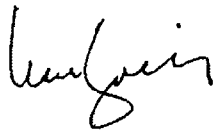
Intelligence Review Agencies Conference

22. This, the second conference of Inspector-Generals and Review Agencies, was held at the end of June 1999 in Ottawa, Ontario, Canada. It was organised under the auspices of the Canadian Security Intelligence Review Committee. The chair and some eleven members or former members of that Review Committee attended the conference. In addition there were representatives of the Inspector-General of the CSIS and the Canadian Commissioner of the Communications Security Establishment. There were present also the Inspector-General from Australia, representatives of Intelligence Review organisations from South Africa including the Minister of Intelligence Services; representatives of the Intelligence and Security Committee in the United Kingdom; and representatives from Belgium of the Comité Permanent de Contrôle des Services de Renseignements. In addition six representatives from the USA attended including the Inspector-General of the CIA, the Inspector-General of the NSA and Inspectors-General from other USA services. There were a number of frank discussions by

representatives of the various organisations represented at the meeting which revealed in some cases constraint as between the Review Authority and the Agency or Agencies under review. At base all face the same problems and are endeavouring to achieve the same results. Each country because of its background and history and its constitution and the conventions which have been developed have sought those results by different means. Overall I take the view that the system we have adopted in New Zealand is, for our society, an effective way of adding the measure of assurance and independence to the curbs and sanctions, both legal and political, which control in the general national interest the activities of the SIS and the GCSB. In the course of the conference the delegates were taken on a visit to the establishment of the CSIS. I took the opportunity while in Washington to visit the offices of the Inspector-General of the NSA. I believe that we can congratulate ourselves on being able to operate Security and Intelligence Services effectively and appropriately for the benefit of New Zealand as a whole on such a small scale. This conference was even more successful than the first. This, I think, was in part because some of us were renewing acquaintances. These conferences though held only every second year are I think valuable in creating personal contacts, in exchanging views and obtaining insight into the scope and operations of the review agencies and the intelligence communities in the various countries represented.

Administration

23. As I have said there has been no expansion in the business of the Inspector-General of Intelligence and Security. It is a part-time operation. I have seen no need to appoint any staff or to contract for any. I do not foresee any change in those respects. The administrative services that I need are provided through the Domestic and External Security Secretariat (DESS). I have found that to be satisfactory. I have received all the assistance that I have required. Adequate financial support has been provided to enable me to carry out my office.



Laurie Greig
Inspector-General of Intelligence and Security
September 1999

APPENDIX

Mandate and Functions of Office of Inspector-General of Intelligence and Security

1. The Office of Inspector-General of Intelligence and Security (IGIS) was established by the enactment of the Inspector-General of Intelligence and Security Act 1996 on 1 July 1996. In accordance with that Act, I was appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition to the office of the IGIS on 1 December 1996 for a term of three years.
2. The object of the Act and of the office of IGIS is to assist the Minister responsible for an intelligence and security agency in the oversight and review of that agency. In particular the IGIS assists the Minister to ensure that the activities of an agency comply with the law. A further object is to ensure that complaints about an agency are independently investigated.
3. The intelligence and security agencies subject to the Act and the IGIS's responsibilities are the New Zealand Intelligence Service and the Government Communications Security Bureau. The Minister responsible for these agencies is the Prime Minister.
4. The IGIS is authorised to inquire into complaints by New Zealand persons and persons employed or formerly employed by those agencies who claim to have been adversely affected by the activities of an agency. The IGIS undertakes other inquiries into the activities of those agencies at the request of the Minister or on his own motion. Such inquiries may examine the propriety of particular activities of an agency. In addition the IGIS may carry out a programme or programmes of general supervision of those agencies.