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New Zealand. Inspector-General of
Intelligence and Security.

Annual report.

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INSPECTOR-GENERAL OF
INTELLIGENCE AND SECURITY

THE HON D.P. NEAZOR CNZM

4 October 2007

Rt Hon Helen Clark, Prime Minister
Parliament Buildings
WELLINGTON

Prime Minister's Office
05 OCT 2007
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Dear Prime Minister

I enclose copy of my Annual Report for the year ended 30 June 2007.

Yours sincerely

D P Neazor
Inspector-General

Enc:

Noted
HC

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INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ANNUAL REPORT 2007

1. This is the eleventh annual report of the Inspector-General of Intelligence and Security, made in accordance with Section 27 of the Inspector-General of Intelligence and Security Act 1996. It covers the year ended 30 June 2007. The mandate and functions of the Inspector-General are set out in the Appendix.

General Workload

2. The functions of the Inspector-General provided for by the Act are based on the concept of independent oversight of the agencies (New Zealand Security Intelligence Service and the Government Communications Security Bureau) to assist the Minister responsible for them by ensuring that the activities of the agencies comply with the law and that complaints relating to them are independently investigated. Action is initiated by way of complaint or through programmes for general oversight and review of each agency approved from time to time by the Minister. There is a particular requirement that the Inspector-General should review from time to time the effectiveness and appropriateness of procedures adopted by the agencies to ensure compliance with the law in relation to the issue and execution of interception warrants.
3. During the year under review five complaints were received: three related to vetting and two related to believed surveillance or interference. Four of the complaints related to the NZSIS: one to the GCSB.
4. The complaints have been investigated with the following results:
 - Two of the vetting complaints were not upheld. In my view the recommendation by the Service was reasonable in each case.
 - The third such matter was not completed within the financial year.

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- The complaint about interference by an overseas agency and the NZSIS in the complainant's life was not pursued by the complainant when details were asked for which would identify the source of the New Zealand activity.
- A complaint relating to allegations of harassment disclosed no evidence of any likely involvement by one or other of the agencies and no further enquiry was made. An assurance was given that the NZSIS had no interest whatever in the complainant or his family.

Interception Warrants

5. The statutes governing the work of the intelligence agencies provide for the issue of authorisations for the interception of communications or the seizure of documents. Authority for the issue in every case rests in the hands of the Minister in charge of the particular agency who is required to have regard to statutory criteria for the issue of authorisations. In every case the head of the agency must provide information on oath on which the Minister can be satisfied that those criteria are met.
6. The requirements in respect of the Inspector-General are referred to above. I examined all authorisations which have been issued by the two agencies during the year. I received satisfactory replies to any query raised about any authorisation although such enquiries have been very few. I have seen nothing to suggest that any interception authorisation fell outside the statutory authority or that the procedures used are likely to have led to a wrong decision.

Overseas Relationships

7. I attended the conference of the Intelligence Review Agencies of the United Kingdom, United States of America, Canada, Australia, New Zealand and

South Africa in South Africa in 2006. Work has begun on the 2008 Conference which will be held in New Zealand.

Consultation

8. During the year I was consulted about aspects of Aviation Security legislation which could give rise to work for the Inspector-General in relation to security vetting of staff members.

Security Risk Certificate – Ahmed Zaoui

9. This matter has occupied by far the greatest amount of time during the year and has given rise to by far the greatest amount of expenditure on behalf of the Inspector-General. The use and disclosure of information has proved to be here, as I believe is the case in other countries, one of the most difficult and time-consuming judgment areas of the security risk certificate process.
10. Mr Zaoui's private counsel were advised about the information regarded as adverse to him. That was available for consideration by me in two batches – the first brought together when the certificate was made in 2003, and the second by way of supplementary material brought together later to support the continuation of the certificate. The disclosure to counsel was done largely by way of summary in accordance with the rulings of the Courts. There were differences of view amongst all counsel involved about what was required to be done.
11. The Courts' rulings were designed to give Mr Zaoui, in accordance with the general law, an adequate opportunity to answer the allegations against him when he was threatened with deportation from New Zealand although he had been accepted as a refugee. They were also designed to preserve the content and source of classified information as Part 4A of the Immigration Act 1987 requires. That is a difficult exercise to carry out in practice.

12. Private counsel for Mr Zaoui sought as much detail as they could get so that they could test the reasons for making and continuing the security risk certificate. The NZSIS co-operated with the review process, but was concerned in relation to disclosure whether the provisions of the law designed for the protection of classified security information were properly complied with. The reviewer's decisions about what must be disclosed in such cases have to be both robust and delicate. If too much is disclosed, there may be damage to international security and intelligence relationships and the future provision of intelligence information to New Zealand, but the less that is identified for examination and if possible, response, (including the context of information relied on) the harder it is to be sure that a full independent review of the merits of making the certificate is taking place. The task of the reviewer in respect of classified information has been described by a Canadian Judge (Noël J. in Charkaoui v Minister of Citizenship (2003)). I have accepted that description as a guide:

“... the designated judge, in his review of the protected records and in the hearing in the absence of the respondent, must nevertheless be curious, concerned by what is advanced, and maintain a sceptical attitude with the objective of conducting a critical review of the facts. He must verify the human, technical and documentary sources, their reliability and the truth of what they may relate. To the degree possible, the information must come from more than one source and must not be subject to an imprecise interpretation. Moreover, the designated judge may examine witnesses who can shed light on the protected information and documents. Where necessary, he may question their interpretation of the facts and verify whether there are not other possible interpretations that might tend to favour the respondent. In a word the designated judge must seriously test the protected documentation and information ...”

13. By the end of the financial year a very considerable amount of time had been spent on the disclosure exercise and arrangements were in hand for a four week hearing to start on the evidence that Mr Zaoui was entitled under the Act to present. The extent of that evidence was then unknown.

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Special Advocates

14. The appointment of two Special Advocates to represent Mr Zaoui's interests in respect of classified material has been recorded in previous reports. The Canadian Supreme Court in February 2007 in Charkaoui v Minister of Citizenship strongly endorsed the appointment of Special Advocates in such situations in the interests of justice. Enquiry is in hand now in Canada as to how such appointments might best achieve their aim.
15. The engagement of Special Advocates has proved to be an expensive part of the process. For that reason, and because of the need to keep the whole process moving cohesively while taking account of the purposes all those involved are trying to serve, I believe a more structured approach should be considered for the work of such counsel than the provision of an open brief from the reviewer to do whatever may be thought necessary in relation to classified information in the interests of the person the subject of the certificate, which was what was done in Mr Zaoui's review.

Servicing

16. The Ministry of Justice acts as my support agency and its officers have readily been of assistance in the provision of new accommodation and other needs which have arisen from time to time, particularly in respect of the Zaoui review and the 2008 Conference. I note with gratitude the assistance provided by the Employment Court towards the hearing of evidence in Auckland.

Appointment

17. The end of the Zaoui review was apparently still some way off when my appointment expired in June 2007. The appointment was renewed for a further three years.

Funding

18. The expenditure on the Inspector-General's work has risen again in this year. The Ministry of Justice has advised that the total expenditure has been \$739,277 compared with last year's \$417,527. Of the \$739,277, \$390,632 was incurred in respect of the work of the Special Advocates, counsel assisting me, and other costs associated with the Zaoui review. \$100,944 was spent on a necessary move to new premises. \$247,701 was spent on my remuneration and other general costs of the office, including my travel to Cape Town in 2006 for the International Conference.



D P Neazor

Inspector-General of Intelligence and Security

October 2007

APPENDIX

Mandate and Functions of Inspector-General of Intelligence and Security

1. The Office of the 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. The Inspector-General is required to have previously held office as a Judge of the High Court of New Zealand. He or she is appointed by the Governor-General on the recommendation of the Prime Minister following consultation with the Leader of the Opposition. The appointment is for a term of three years and may be renewed. The Inspector-General is subject to removal or suspension from office by the Governor-General for defined cause, upon an address from the House of Representatives.
2. The object of the Act and of the office of the 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 Security 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 or her 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 the agencies, approved by the Minister

5. Under Part IVA of the Immigration Act 1987 as amended by the Immigration Amendment Act 1999, the Inspector-General of Intelligence and Security has a function to review the decision to make a security risk certificate issued by the Director of Security. Under the Protected Disclosures Act 2000, the Inspector-General of Intelligence and Security is the only appropriate authority in respect of protected disclosures to be made by employees of the security agencies.

6. The postal address of the Inspector-General is PO Box 5609, Wellington 6145. The telephone number is 04 473 8671 and the fax number is 04 473 8534. Under the Act complaints to the Inspector-General are made in writing addressed to the Inspector-General c/- The Registrar or Deputy Registrar of the High Court at Wellington.