# Office of the Communications Security Establishment Commissioner

2018-19

**Departmental Results Report** 

The Honourable Harjit S. Sajjan, PC, OMM, MSM, CD, MP Minister of National Defence © Her Majesty the Queen in Right of Canada, as represented by the Office of the Communications Security Establishment Commissioner, 2019.

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# Commissioner's message

This is the final results report of the Office of the Communications Security Establishment Commissioner (OCSEC). I deliver this 2018–19 results report not as the Communications Security Establishment Commissioner but as the former Communications Security Establishment Commissioner. The last day of operations for OCSEC was July 11, 2019. The Intelligence Commissioner Act came into force on July 12, 2019 and created the Office of the Intelligence Commissioner. In accordance with the transitional provisions of the *Intelligence Commissioner Act*, I am now the Intelligence Commissioner; the employees of the former OCSEC now occupy their positions in the new Office of the Intelligence Commissioner; the unexpended appropriation of OCSEC is deemed the amount appropriated to the Office of the Intelligence Commissioner; and all rights, property and obligations of the former office are now transferred to the Office of the Intelligence Commissioner. The review functions of the former OCSEC have been transferred to the National Security and Intelligence Review Agency (NSIRA).

For the past 23 years, consecutive Commissioners have delivered on their mandate to review the activities of the Communications Security Establishment (CSE) to determine whether CSE performs its duties and functions in accordance with the laws of Canada. This includes having due regard for the privacy of Canadians. During that time, Commissioners have submitted to the Minister 122 review reports. Of the 175 recommendations contained in these reports, CSE has accepted and implemented, or is working to address, 166 or 95% of these recommendations. The office can be pleased with its contribution to the overall accountability of CSE to Parliament and the public, and to improvements in CSE policies and practices.

I have worked, in the almost 6 years since my appointment as Commissioner, to increase transparency, to the greatest extent legally possible, about the activities of CSE. The resultant greater disclosure has provided to Canadians a greater appreciation of the critical work performed by CSE and increased confidence and trust in the accountability framework within which CSE works.

It is important that review bodies share their experiences, both nationally and internationally and I have supported these exchange opportunities throughout my tenure as Commissioner. Changes in legislation, oversight bodies, and accountability structures continue. Technology and terrorism do not stand still. Best practices, collaboration, new and emerging issues – all can be discussed and shared for the benefits of all.

In closing, I wish to thank my very capable, professional and dedicated staff. The accomplishments reported in this report are as a result of their efforts and their desire to make a difference.

# Results at a glance

The total spending of the office for 2018–19 was \$2.123 million. The Commissioner was supported by 10 employees, together with a number of subject matter experts, as required.

The Commissioner, each year, provides an overall statement on the lawfulness of CSE activities. This past year, all of the CSE activities reviewed complied with the law.

Throughout the course of the year:

- The Commissioner submitted eight classified reports to the Minister, containing five recommendations; the Minister and CSE accepted all of the recommendations in these reports.
- The Commissioner's work plan for the conduct of his reviews is risk-based and preventative in its approach, focusing on activities where the risk of noncompliance with the law is highest. The work plan covers three years and it is updated twice annually. The most recent work plan completed by the office was provided to the National Security and Intelligence Review Agency along with material on the ongoing review projects.
- The office continued its practice of delivering presentations about its mandate and operations to new CSE employees as part of CSE's foundational learning curriculum. At the same time, office employees attended courses at CSE receiving the same information that CSE employees receive.
- Through attendance and networking at conferences addressing information technology security, national security, privacy, cyber security and the law, employees maintain and advance their knowledge in these review-related areas.
- The Commissioner and the office have continued meetings and discussions with Canadian and international review bodies (Five Eyes) addressing issues such as internal terrorism and cyber threats, accountability structures, and authorities' oversight and learning from the experiences of the others.
- While continuing to discharge his mandate in an effective manner, the Commissioner and his office were examining and studying Bill C-59, An Act respecting national security matters. Principles, practices and processes had to be established and agreed upon to ensure that the office would be fully operational on the day the legislation would come into force. During the course of the year, the Commissioner met with the Minister of National Defence, the National

Security and Intelligence Advisor to the Prime Minister, the Chief of CSE and the Director of CSIS to discuss the pending legislation and its implications. Senior officials of the Commissioner's office also met frequently with their counterparts in CSE, CSIS, Public Safety Canada, the Privy Council Office, the Security and Intelligence Review Committee and the Secretariat of the National Security and Intelligence Committee of Parliamentarians to address respective roles, responsibilities and processes envisioned under Bill C-59.

For more information on the OCSEC's plans, priorities and results achieved, see the "Results: what we achieved" section of this report.

Results: what we achieved

Core Responsibilities

Communications Security Establishment Commissioner's Review Program

#### **Description**

The program activity provides independent review by the Office of the Communications Security Establishment Commissioner of the lawfulness of the activities of the Communications Security Establishment (CSE) to determine whether they complied with the laws of Canada in general and, in particular, the Canadian Charter of Rights and Freedoms, the National Defence Act, the Criminal Code and the Privacy Act. The program activity also includes undertaking any investigation the Commissioner considers necessary in response to any complaint filed by Canadian citizens and permanent residents of Canada. If the Commissioner believes that CSE may not have complied with the law, he is required to inform the Minister of National Defence and the Attorney General of Canada. In addition, the Commissioner has a duty under the Security of Information Act to receive information from persons who are permanently bound to secrecy if they wish to claim a public interest defence for divulging classified information about CSE, and to provide a response within a reasonable time.

#### Results

During the 2018–19 reporting year, the Commissioner submitted eight classified reports to the Minister on his reviews of CSE activities.

These eight reviews were conducted under the Commissioner's authority under the National Defence Act:

- to ensure CSE activities are in compliance with the law; and
- to ensure CSE activities carried out under a ministerial authorization are authorized.

In a review of CSE's targeting practices in the context of a particular foreign signals collection program that is also subject to a ministerial directive, the Commissioner found discrepancies between requirements in the ministerial directive and CSE practices. This resulted in repeating a recommendation made twice in the past that CSE reconcile these discrepancies either to comply with or amend the ministerial directive.

One review resulted in three of the five recommendations the Commissioner made this year. This review related to CSE's assistance to the Canadian Security Intelligence Service's warranted activities for investigating or reducing a threat to the security of Canada using intrusive means, regardless of where that identified threat is situated in the world.

The review of disclosures of Canadian identity information for 2018–19 focused on

ensuring implementation of a previous recommendation that when a client requests disclosure of Canadian identity information, the client must specify its lawful authority and a robust operational justification to acquire that information.

Besides the review of CSE disclosures of Canadian identity information, the Commissioner also conducted other annual reviews:

- ministerial authorizations for foreign signals intelligence activities;
- one-end Canadian communications (including private communications) acquired, used, retained and destroyed by CSE, which was a spot check examination whose results were reported with the annual review of ministerial authorizations related to foreign intelligence;
- · cyber defence activities conducted under ministerial authorization; and
- CSE incidents and procedural errors related to privacy.

The review of incidents and procedural errors brought to light a privacy incident that demanded deeper examination. This incident was the subject of its own review.

Each year, the Commissioner provides an overall statement on findings about the lawfulness of CSE activities. This past year all CSE activities reviewed complied with the law.

The Commissioner made five recommendations to promote compliance with the law and strengthen privacy protection, including that:

- 1. CSE reconcile discrepancies between requirements in a ministerial directive and CSE practices, either by fulfilling the stipulated administrative obligations or seeking an amendment to the applicable ministerial directive;
- 2. CSE develop, in collaboration with CSIS, a mechanism to provide CSE minimally redacted judicial decisions relevant to understanding CSIS's warrant authorities;
- 3. CSE develop, in collaboration with CSIS, a formal notification mechanism to inform CSE of any changes to the warrant template or of any changes to the underlying interpretations of CSIS warrants in the context of the warranted target activities;
- 4. CSE take measures to ensure that the identification and retrieval of all documentation relevant to a review request are accurate and complete; and
- 5. CSE take measures to ensure its corporate records regarding the disclosure of Canadian identity information contain detailed and complete information describing and documenting the disclosure, and the status of the disclosure.

#### Results achieved

Departmental results	Performance indicators	Target	Date to achieve target	2018–19 Actual results	2017–18 Actual results	2016–17 Actual results
The CSE performs its duties and functions in accordance with	% of reviews completed within targeted time frames	80%	March 31, 2019	100%	89%	100%
the laws of Canada and with due regard for the privacy of Canadians	% of recommendations accepted	80%	March 31, 2019	100%	100%	100%

#### Budgetary financial resources (dollars)

	Planned spending	Total authorities	Actual spending (authorities used)	2018–19 Difference (Actual spending minus Planned spending)
1,628,744	1,628,744	1,731,335	1,586,724	(42,020)

#### Human resources (full-time equivalents)

	Actual full-time equivalents	2018–19 Difference (Actual full-time equivalents minus Planned full-time equivalents)
8.5	7.5	(1)

The office has again exceeded results expectations. The Commissioner's review program is being delivered effectively as results achieved are exceeding targets. The costs of achieving these results are less than what was planned. With the continued growth in both expertise and experience the office staff, planned expenditures for the engagement of subject matter experts were significantly reduced. This reduction in expenditures accounts for almost all of the difference between actual and planned spending.

Financial, human resources and performance information for the OCSEC's Program Inventory is available in the GC InfoBase.i

#### Internal Services

#### **Description**

Internal Services are those groups of related activities and resources that the federal government considers to be services in support of programs and/or required to meet corporate obligations of an organization. Internal Services refers to the activities and resources of the 10 distinct service categories that support Program delivery in the organization, regardless of the Internal Services delivery model in a department. The 10 service categories are:

- Acquisition Management Services
- Communications Services
- ▶ Financial Management Services
- ▶ Human Resources Management Services
- ▶ Information Management Services
- **▶** Information Technology Services
- Legal Services
- ▶ Materiel Management Services
- ▶ Management and Oversight Services
- ▶ Real Property Management Services

#### Results

Internal Services continued to be provided to the Commissioner and the Executive Director in support of the review program in 2018–19. There were no significant changes services or service levels delivered for the Office of the CSE Commissioner. However, the internal services activities were not restricted to the Office of the CSE Commissioner. Transitional planning and operational adjustments for the potential transition to the Office of the Intelligence Commissioner were well underway. Formal agreements with other government departments were in the final stages of development and addressed a wide range of critical and essential services such as human resource management, including compensation and classification, financial management including the creation of a new departmental financial management system, email and workplace information technology and information management, including the determination of information resources of business value and the development of retention and disposition schedules.

## Budgetary financial resources (dollars)

2018–19 Main Estimates	2018–19 Planned spending	Total authorities		2018–19 Difference (Actual spending minus Planned spending)
491,894	491,894	540,000	536,672	44,778

#### Human resources (full-time equivalents)

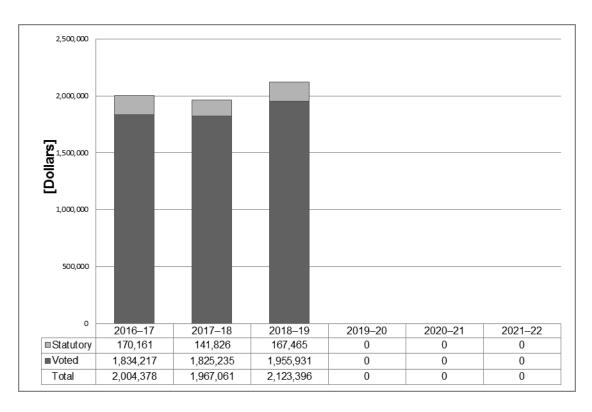
	Actual full-time equivalents	2018–19 Difference (Actual full-time equivalents minus Planned full-time equivalents)
3	3	0

Professional service costs were above what were planned. These additional costs were incurred to help ensure the necessary internal services support systems would continue to function effectively for the Office of the CSE Commissioner and would be positioned in such a manner as to be able to transition effectively to the new office.

# Analysis of trends in spending and human resources

# Actual expenditures

Departmental spending trend graph



## Budgetary performance summary for Core Responsibility and Internal Services (dollars)

Core Responsibility and Internal Services	2018–19 Main Estimates	2018–19 Planned spending	Planned	2020–21 Planned spending	2018–19 Total authorities available for use	2018–19 Actual spending (authorities used)	Actual spending (authorities	2016–17 Actual spending (authorities used)
Independent, external review of CSE activities to determine compliance with the laws of Canada	1,628,744	1,628,744	The last day of operations of the OCSEC was July 11, 2019	N/A	1,731,335	1,586,724	1,392,546	1,359,747
Internal Services	491,894	491,894	See above	N/A	540,000	536,672	574,515	644,631
Total	2,120,638	2,120,638	See above	N/A	2,271,335	2,123,396	1,967,061	2,004,378

Total departmental spending has increased by slightly in excess of \$156 thousand. However, it was recognized, and planned for, that the expenditures this year would increase as the office, in addition to its core responsibility, would have to prepare for the likelihood that Bill C-59 would pass and be implemented early in fiscal year 2019–20. As a result, the actual departmental spending exceeded the planned spending by less than \$3 thousand or less than 1%.

Salary and professional service costs increased by \$140 thousand. The majority of this increase can be attributed to the cost of additional legal services that were acquired under contract. These legal costs were directly tied in part to the need for the analysis of Bill C-59 as it moved through both the House of Commons and the Senate and the development of procedures related to the new mandate of the Intelligence Commissioner.

Transportation costs increased by \$53 thousand, the majority related to international travel and meetings with stakeholders. The Commissioner and senior officials of the office attended the Five Eyes Intelligence Oversight and Review Council meeting in Australia in 2018–19. There was no similar outlay in the previous year as the meeting was held in Ottawa.

The office negotiated a new 10-year occupancy instrument resulting in a savings of approximately \$25 thousand. As well, spending by the office on furnishings and equipment declined from the previous year by almost \$10 thousand.

#### Actual human resources

Human resources summary for Core Responsibilities and Internal Services (full-time equivalents)

Core Responsibilities and Internal Services		Actual full-time		Actual full-time	Planned	2020–21 Planned full-time equivalents
Independent, external review of CSE activities to determine compliance with the laws of Canada	8.5	8.5	8.5	7.5	The last day of operations of the OCSEC was July 11, 2019	N/A
Internal Services	3	3	3	3	See above	N/A
Total	11.5	11.5	11.5	10.5	See above	N/A

## Expenditures by vote

For information on the Office of the CSE Commissioner's organizational voted and statutory expenditures, consult the Public Accounts of Canada 2018–2019<sup>ii</sup>.

## Government of Canada spending and activities

Information on the alignment of the Office of the CSE Commissioner's spending with the Government of Canada's spending and activities is available in the GC InfoBase<sup>iii</sup>.

# Financial statements and financial statements highlights Financial statements

The Office of the CSE Commissioner's financial statements (unaudited) for the year ended March 31, 2019, are available on the departmental website<sup>iv</sup>.

## Financial statements highlights

Condensed Statement of Operations (unaudited) for the year ended March 31, 2019 (dollars)

Financial information	2018–19 Planned results	2018–19 Actual results	2017–18 Actual results	Difference (2018–19 Actual results minus 2018–19 Planned results)	Difference (2018–19 Actual results minus 2017–18 Actual results)
Total expenses	2,401,065	2,331,823	2,169,251	(69,242)	162,572
Net cost of operations before government funding and transfers	2,401,065	2,331,823	2,169,251	(69,242)	162,572

The actual total expenses were in line with the planned total expenses with the exception of professional services and accommodations. The planned engagement of subject matter experts to assist in the conduct of reviews did not occur to the extent originally envisioned (-\$54 thousand). The cost of rental accommodations following the negotiation of a new 10-year occupancy instrument dropped from what was planned (-\$12 thousand).

The actual total expenses increased from the previous year by \$163 thousand. Salaries and professional services accounted for an increase of \$135 thousand, the majority of this increase attributable to the cost of additional legal services. These legal costs were directly tied in part to the need for the analysis of Bill C-59 and work on the development of a quasi-judicial review program. Transportation costs increase over the previous year by \$53 thousand, primarily due to the attendance by Commissioner and senior officials of the office at the Five Eyes Intelligence Oversight and Review Council meeting in Australia in 2018–2019. Offsetting these increases was a reduction in accommodation costs of \$25 thousand following the signing of a new 10-year occupancy instrument.

## Condensed Statement of Financial Position (unaudited) as of March 31, 2019 (dollars)

Financial Information	2018–19	2017–18	Difference (2018–19 minus 2017–18)
Total net liabilities	269,622	302,729	(33,107)
Total net financial assets	248,277	245,834	2,443
Departmental net debt	21,345	56,895	(35,550)
Total non-financial assets	394,324	513,410	(119,086)
Departmental net financial position	372,979	456,515	(83,536)

Total net liabilities decreased by \$33 thousand, the majority of that reduction resulting from the settlement of vacation leave through retirement. There is no significant change in net financial assets. The reduction of total non-financial assets results almost exclusively from the amortization of tangible capital assets.

# Supplementary information

Corporate information

Organizational profile

**Appropriate minister:** The Honourable Harjit S. Sajjan, PC, OMM, MSM, CD, MP

Minister of National Defence

**Institutional head:** The Honourable Jean-Pierre Plouffe, CD – Commissioner

Ministerial portfolio: National Defence

**Enabling instrument:** National Defence Act<sup>v</sup>; Inquiries Act<sup>vi</sup>; Security of Information

Act<sup>vii</sup>

Year of incorporation / commencement: 1996

**Other:** 2008 – the Commissioner's office was granted its own appropriation from

Parliament.

Raison d'être, mandate and role: who we are and what we do

"Raison d'être, mandate and role: who we are and what we do" is available on the Office of the CSE Commissioner's websiteviii.

# Operating context and key risks

Information on operating context and key risks is available on the Office of the CSE Commissioner's websiteix.

# Reporting Framework

The Office of the CSE Commissioner's Departmental Results Framework and Program Inventory of record for 2018–19 are shown below.

Graphical presentation of Departmental Results Framework and Program Inventory

-ramework	Core Responsibility: Review of CSE activities to determine compliance with the law		
Departmental Results Framework	Departmental Result: Timely and effective review of the Communications Security Establishment's compliance with the laws and legislation governing its activities	% of recommendations accepted % of reviews completed within targeted time frames	Internal Services
Program Inventory	The Communications Security Establishment Commissioner's Review Program		

# Supporting information on the Program Inventory

Financial, human resources and performance information for the Office of the CSE Commissioner's Program Inventory is available in the GC InfoBase<sup>x</sup>.

## Supplementary information tables

The following supplementary information tables are available on the Office of the CSE Commissioner's websitexi:

- Departmental Sustainable Development Strategy
- Gender-based analysis plus

## Federal tax expenditures

The tax system can be used to achieve public policy objectives through the application of special measures such as low tax rates, exemptions, deductions, deferrals and credits. The Department of Finance Canada publishes cost estimates and projections for these measures each year in the Report on Federal Tax Expenditures.xii This report also provides detailed background information on tax expenditures, including descriptions, objectives, historical information and references to related federal spending programs. The tax measures presented in this report are the responsibility of the Minister of Finance.

# Organizational contact information

The Office of the CSE Commissioner closed on July 11, 2019.

For further information on the Office of the Communications Security Establishment Commissioner, its mandate, activities and related reporting please visit the office's website. Please be informed, that the website is now archived and is available for reference purposes only.

# Appendix: definitions

#### appropriation (crédit)

Any authority of Parliament to pay money out of the Consolidated Revenue Fund.

#### budgetary expenditures (dépenses budgétaires)

Operating and capital expenditures; transfer payments to other levels of government, organizations or individuals; and payments to Crown corporations.

#### **Core Responsibility (responsabilité essentielle)**

An enduring function or role performed by a department. The intentions of the department with respect to a Core Responsibility are reflected in one or more related Departmental Results that the department seeks to contribute to or influence.

#### Departmental Plan (plan ministériel)

A report on the plans and expected performance of an appropriated department over a three-year period. Departmental Plans are tabled in Parliament each spring.

#### Departmental Result (résultat ministériel)

A Departmental Result represents the change or changes that the department seeks to influence. A Departmental Result is often outside departments' immediate control, but it should be influenced by program-level outcomes.

#### Departmental Result Indicator (indicateur de résultat ministériel)

A factor or variable that provides a valid and reliable means to measure or describe progress on a Departmental Result.

#### Departmental Results Framework (cadre ministériel des résultats)

Consists of the department's Core Responsibilities, Departmental Results and Departmental Result Indicators.

#### **Departmental Results Report (rapport sur les résultats ministériels)**

A report on an appropriated department's actual accomplishments against the plans, priorities and expected results set out in the corresponding Departmental Plan.

#### experimentation (expérimentation)

Activities that seek to explore, test and compare the effects and impacts of policies, interventions and approaches, to inform evidence-based decision-making, by learning what works and what does not.

#### full-time equivalent (équivalent temps plein)

A measure of the extent to which an employee represents a full person-year charge against a departmental budget. Full-time equivalents are calculated as a ratio of assigned hours of work to scheduled hours of work. Scheduled hours of work are set out in collective agreements.

### gender-based analysis plus (GBA+) (analyse comparative entre les sexes plus [ACS+])

An analytical process used to help identify the potential impacts of policies, Programs and services on diverse groups of women, men and gender differences. We all have multiple identity factors that intersect to make us who we are; GBA+ considers many other identity factors, such as race, ethnicity, religion, age, and mental or physical disability.

#### government-wide priorities (priorités pangouvernementales)

For the purpose of the 2018–19 Departmental Results Report, those high-level themes outlining the government's agenda in the 2015 Speech from the Throne, namely: Growth for the Middle Class; Open and Transparent Government; A Clean Environment and a Strong Economy; Diversity is Canada's Strength; and Security and Opportunity.

#### horizontal initiative (initiative horizontale)

An initiative where two or more departments are given funding to pursue a shared outcome, often linked to a government priority.

#### non-budgetary expenditures (dépenses non budgétaires)

Net outlays and receipts related to loans, investments and advances, which change the composition of the financial assets of the Government of Canada.

#### performance (rendement)

What an organization did with its resources to achieve its results, how well those results compare to what the organization intended to achieve, and how well lessons learned have been identified.

#### performance indicator (indicateur de rendement)

A qualitative or quantitative means of measuring an output or outcome, with the intention of gauging the performance of an organization, program, policy or initiative respecting expected results.

#### performance reporting (production de rapports sur le rendement)

The process of communicating evidence-based performance information. Performance reporting supports decision making, accountability and transparency.

#### plan (plan)

The articulation of strategic choices, which provides information on how an organization intends to achieve its priorities and associated results. Generally a plan will explain the logic behind the strategies chosen and tend to focus on actions that lead up to the expected result.

#### planned spending (dépenses prévues)

For Departmental Plans and Departmental Results Reports, planned spending refers to those amounts presented in Main Estimates.

A department is expected to be aware of the authorities that it has sought and received. The determination of planned spending is a departmental responsibility, and departments must be able to defend the expenditure and accrual numbers presented in their Departmental Plans and Departmental Results Reports.

#### priority (priorité)

A plan or project that an organization has chosen to focus and report on during the planning period. Priorities represent the things that are most important or what must be done first to support the achievement of the desired Strategic Outcome(s) or Departmental Results.

#### program (programme)

Individual or groups of services, activities or combinations thereof that are managed together within the department and focus on a specific set of outputs, outcomes or service levels.

#### result (résultat)

An external consequence attributed, in part, to an organization, policy, program or initiative. Results are not within the control of a single organization, policy, program or initiative; instead they are within the area of the organization's influence.

#### statutory expenditures (dépenses législatives)

Expenditures that Parliament has approved through legislation other than appropriation acts. The legislation sets out the purpose of the expenditures and the terms and conditions under which they may be made.

#### Strategic Outcome (résultat stratégique)

A long-term and enduring benefit to Canadians that is linked to the organization's mandate, vision and core functions.

#### target (cible)

A measurable performance or success level that an organization, program or initiative plans to achieve within a specified time period. Targets can be either quantitative or qualitative.

#### voted expenditures (dépenses votées)

Expenditures that Parliament approves annually through an Appropriation Act. The Vote wording becomes the governing conditions under which these expenditures may be made.

## **Endnotes**

- i. GC InfoBase, https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#start
- ii. Public Accounts of Canada 2018–19, http://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/indexeng.html
- iii GC InfoBase, https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#start
- iv Office of the Communications Security Establishment Commissioner, https://www.ocsecbccst.gc.ca/s47/s34/eng/financial-statements
- National Defence Act, http://laws-lois.justice.gc.ca/eng/acts/N-5/
- vi. Inquiries Act, http://laws-lois.justice.gc.ca/eng/acts/i-11/
- vii. Security of Information Act, http://laws-lois.justice.gc.ca/eng/acts/O-5/
- viii Office of the Communications Security Establishment Commissioner, https://www.ocsecbccst.gc.ca/
- ix Office of the Communications Security Establishment Commissioner, https://www.ocsecbccst.gc.ca/
- GC InfoBase, https://www.tbs-sct.gc.ca/ems-sgd/edb-bdd/index-eng.html#start
- Office of the Communications Security Establishment Commissioner, https://www.ocsecbccst.gc.ca/s47/eng/publications
- xii. Report on Federal Tax Expenditures, http://www.fin.gc.ca/purl/taxexp-eng.asp