



Office of  
the Intelligence  
Commissioner

Bureau du  
commissaire  
au renseignement

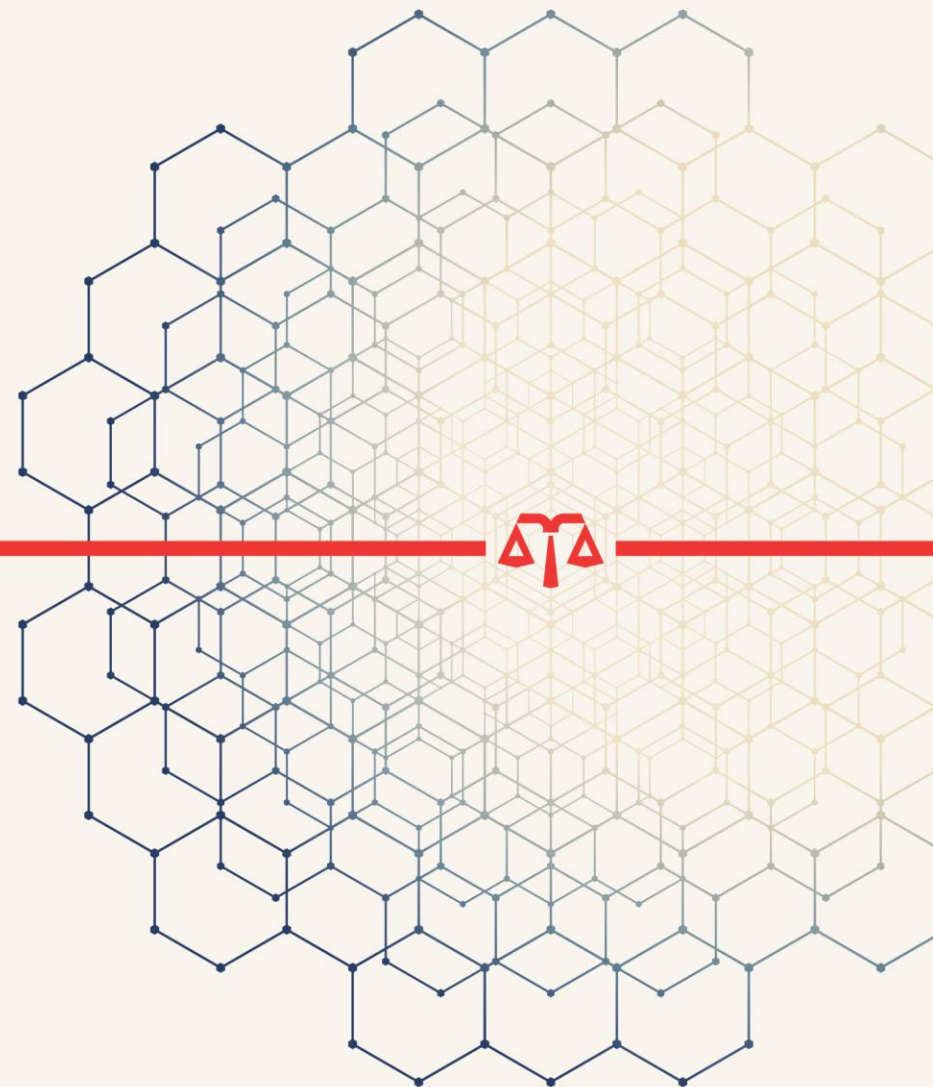
# The Intelligence Commissioner: **Duties and Functions**

Victoria International Privacy & Security Summit

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[www.canada.ca/en/intelligence-commissioner](http://www.canada.ca/en/intelligence-commissioner)



Canada

# ***Intelligence Commissioner Act***

## **Background**

- June 2019 – *An Act respecting national security matters* (known as *the National Security Act, 2017*) came into force.
- Reshaped Canada's national security and intelligence accountability framework:
  - Adoption of the *Intelligence Commissioner Act*: established the Office of the Intelligence Commissioner, a unique quasi-judicial function in Canada;
  - Coming into force of the *Communications Security Establishment Act* (CSE Act), and the *National Security and Intelligence Review Agency Act*; and
  - Amended the *Canadian Security Intelligence Service Act* (CSIS Act).

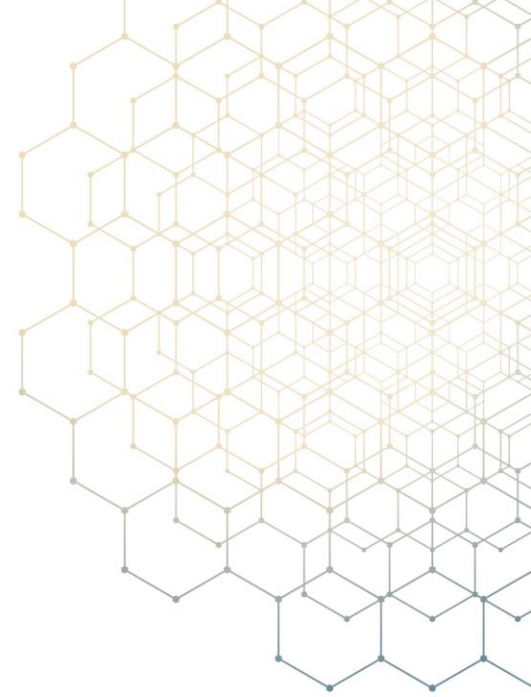
**\*\*Minister of Justice's Charter Statement:** "...*the Intelligence Commissioner Act, would establish an independent, quasi-judicial Intelligence Commissioner, who would assess and review certain Ministerial decisions regarding intelligence gathering and cyber security activities. This would ensure an independent consideration of the important privacy and other interests implicated by these activities in a manner that is appropriately adapted to the sensitive national security context.*"



# The Intelligence Commissioner

## Requirements

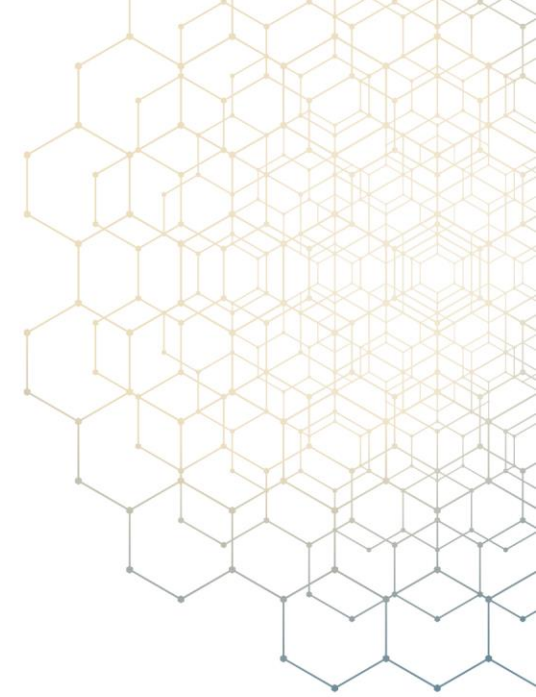
- The IC must be a retired judge of a superior court;
- Appointed for a maximum of 5 years, renewable for a second term; and
- Has the rank and all the powers of a deputy head of a department (i.e. Deputy Minister) and as such assumes all the attributes that are attached to such position.
- **The Honourable Simon Noël was appointed in October 2022**



# Mandate

## Role

- The IC approves, or not, certain national security and intelligence activities that the Communications Security Establishment (CSE — cryptologic agency) and the Canadian Security Intelligence Service (CSIS — intelligence agency) wish to carry out.
- These activities may be contrary to laws of Canada or of a foreign state and infringe on the privacy interests of Canadians or persons in Canada.
- CSE and CSIS must first obtain the written authorization of their respective minister, or in certain cases for CSIS, the Director of CSIS. The IC then reviews the minister's or the Director's authorization to determine whether the conclusions it contains are reasonable. Only with approval from the IC can the activities take place.
- **RAISON D'ÊTRE:** The IC ensures the preservation of the required balance between national security interests on the one hand, and respect for the rule of law, the *Canadian Charter of Rights and Freedoms*, as well as the privacy rights of Canadians and persons in Canada, on the other.



# Mandate

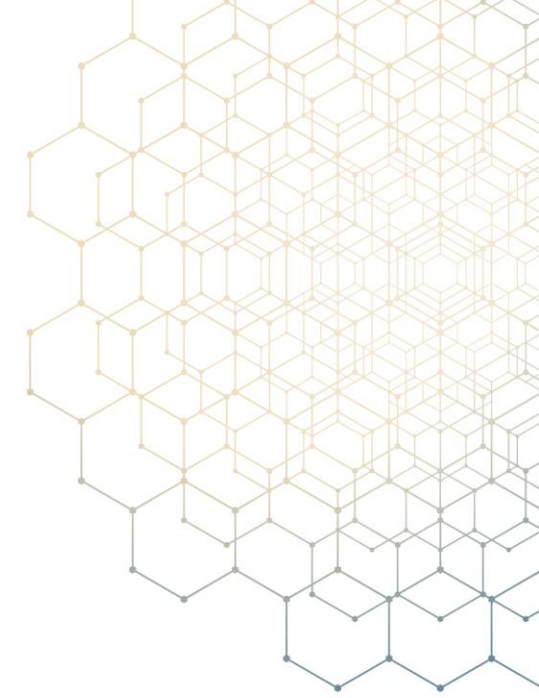
## CSE activities requiring IC approval (application by the Minister of National Defence)

**(1) Foreign Intelligence Authorization:** The activities undertaken by CSE to acquire information from or through the global information infrastructure (e.g., internet, telecommunications networks) may contravene a law of Canada or of a foreign state and breach privacy interests of Canadians and persons in Canada.

[s 13 *IC Act*; ss 26(1), 34(1) and (2) *CSE Act*]

**(2) Cybersecurity Authorization (federal or non-federal infrastructures):** The activities undertaken by CSE to help protect electronic information and systems important to the Government of Canada from cyber threats may contravene Canadian laws and breach privacy interests of Canadians and persons in Canada.

[s 14 *IC Act*; ss 27(1) and (2), 34(1) and (3) *CSE Act*]



# Mandate

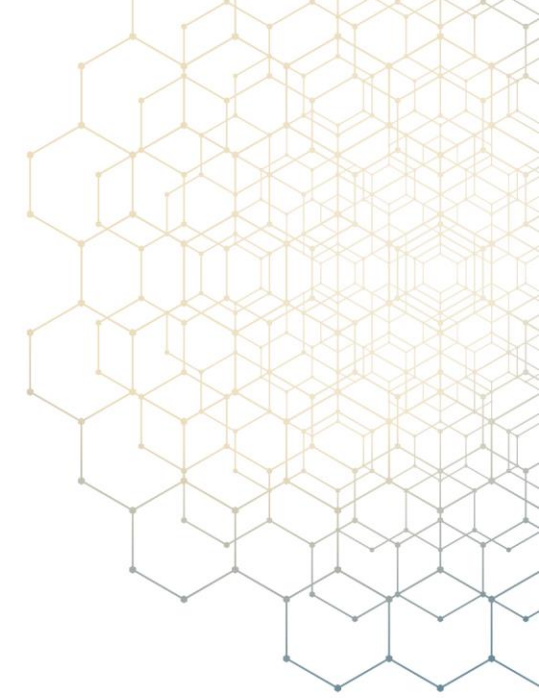
## CSIS activities requiring IC approval (application by the Minister of Public Safety)

**(1) Classes of acts or omissions that would otherwise be unlawful:** CSIS employees or persons acting under their direction can, in specific circumstances and with the required approvals, commit acts that are contrary to the law. The IC must approve the classes which lists the type of acts that can be committed or omitted.

[s 19 *IC Act*; s 20.1(3) *CSIS Act*]

**(2) Classes of Canadian datasets:** CSIS can collect, retain and search datasets that contain personal information about Canadians and persons in Canada that are not directly related to a threat to the security of Canada, but are nevertheless relevant to its duties. CSIS can collect a Canadian dataset if it falls within a class approved by the IC. Federal Court approval is required for retention of the dataset, which CSIS can subsequently search.

[s 16 *IC Act*; s 11.03 *CSIS Act*]



# Mandate

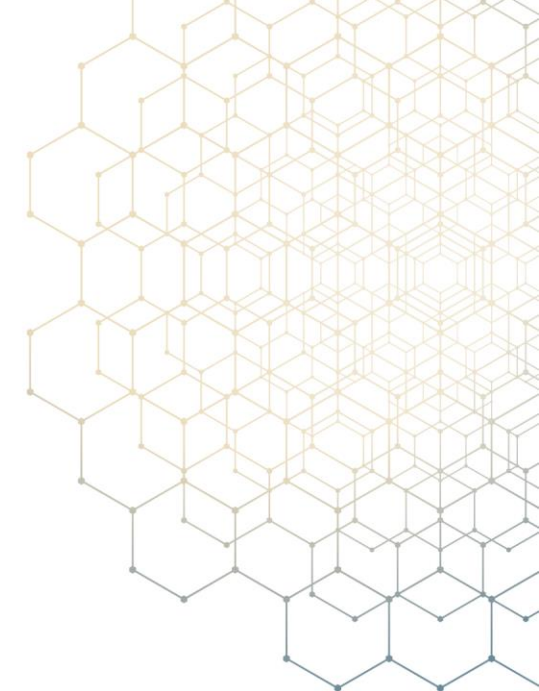
## CSIS activities requiring IC approval (application by the Director of CSIS)

**(3) Retention of foreign datasets:** CSIS can collect, retain and search datasets that predominantly do not relate to Canadians or persons in Canada and that are not directly threat-related but are nevertheless relevant to its duties. The IC must approve the retention of a foreign dataset before CSIS can search it.

[s 17 *IC Act*; s 11.17 *CSIS Act*]

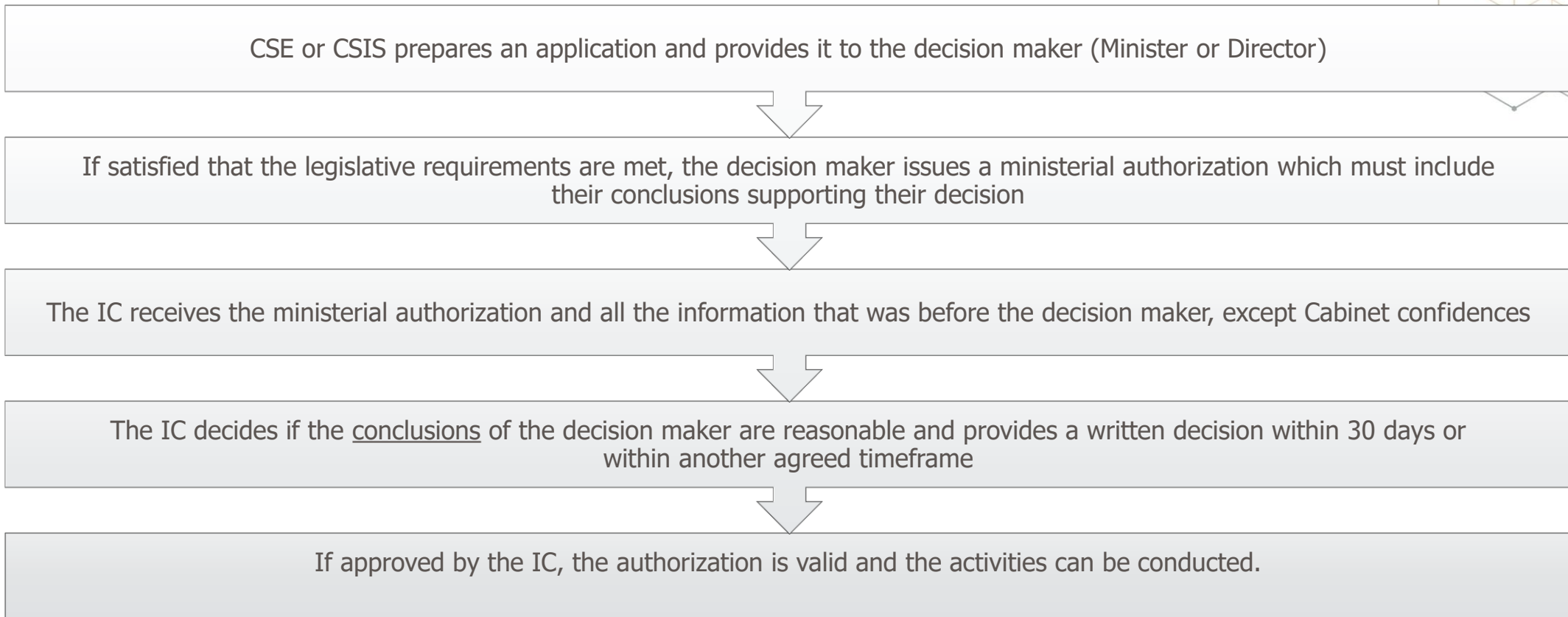
**(4) Query of a dataset in exigent circumstances:** IC approval may be sought in urgent situations for CSIS to search a dataset where there exists a risk to life or individual safety, or where perishable information of significant value to national security may be lost.

[s 18 *IC Act* ; s 11.22(1) *CSIS Act*]



# Oversight Process

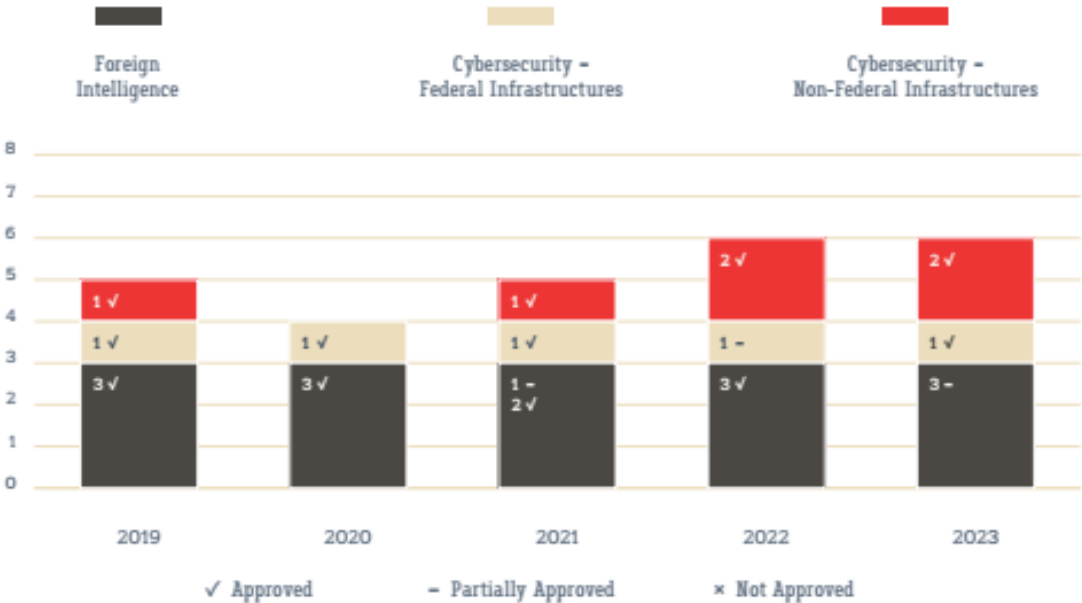
## Procedural steps



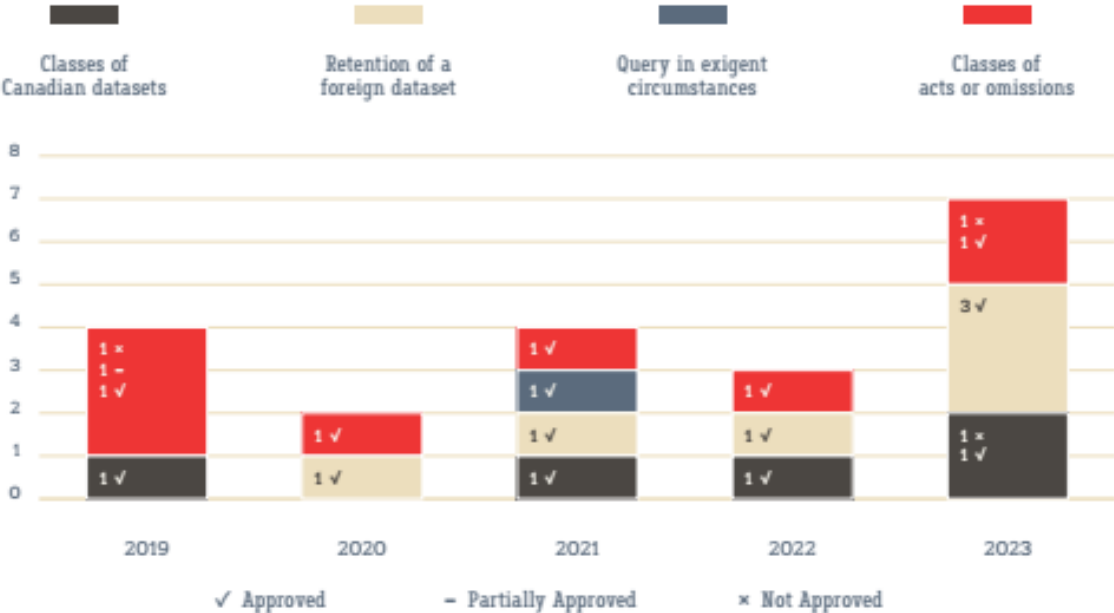


# 5 Years - Results

Authorizations reviewed by the IC - CSE activities



Authorizations reviewed by the IC - CSIS activities



# Decisions

A flavour of certain themes

**"...I find that the Minister's balancing exercise is reasonable. The Acts of Parliament that have the potential to be contravened, and specifically the provisions at issue of the Acts, are limited in number and in impact on the Canadian public. That is not to say that the potential offences are not serious. Rather, CSE proposes to carry out its activities in a way that will limit the potential offences. As such, I am satisfied that when an Act of Parliament is breached, the impact of the breach will be limited."**

- *In the matter of a Cybersecurity Authorization for activities on Non-Federal Infrastructures, Dec 2022*

**"...determining classes of Canadian datasets is the initial step that can eventually lead to CSIS retaining information on Canadians and persons in Canada that is not threat-related. Its impact on privacy interests of Canadians and persons in Canada have the potential to be enormous and egregious. It is crucial to ensure that this broad power is exercised responsibly."**

- *In the matter of a Determination of Classes of Canadian Datasets, June 2023*

