

**Government of Canada response to the recommendations of the NSIRA Review arising from Federal Court's
Judgement in 2020 FC 616**

NSIRA Recommendation	Related Findings(s)	Government Response	Explanation
<p>Recommendation 1: Justice pursue its commitment to reforming the manner of providing legal advice to CSIS, and its stated commitment to “road map”-style advice as a best practice. In support of this objective and the provision of timely, operationally relevant advice, NSIRA further recommends that Justice implement the following:</p> <ul style="list-style-type: none"> • Whether through an expanded “office hours” and liaison counsel program or otherwise, NSLAG must develop a legal support service operating full time, staffed by experienced lawyers empowered to provide operational advice in real time on which CSIS officers can rely, on the basis of settled Justice positions on recurring legal issues, accessible directly to CSIS officers across all regional offices and at all levels. • NSLAG develop a concise reference tool with its position on recurring issues and most common legal authorities invoked and make the 	<p>Finding no. 1: NSIRA finds that the legal advice-seeking and giving process, and resource constraints at NSLAG contribute to considerable delays, [description of timeline].</p> <p>Finding no. 4: NSIRA finds that difficulties in acquiring prompt and relevant legal advice have contributed to [discussion of the detrimental effects on and risks to operations] that may require legal advice. In consequence, the manner in which NSLAG has provided legal advice to CSIS has often not met the needs of CSIS operations. "</p> <p>Finding no. 6: NSIRA finds that Justice has acknowledged that internal silos at NSLAG between the advisory and litigation wings</p>	<p>Agree</p>	<p>Prior to NSIRA issuing its report, Justice Canada has been working on a number of measures concerning policies and practices in the provision of legal services to CSIS. These measures include activities related to the duty of candour and the warrant acquisition process, best practices in the delivery of legal services, advising CSIS on legal risks associated with its operations, the sharing of information in the national security context, and tracking and responding to key performance indicators related to the delivery of legal services.</p> <p>Justice is committed to improving the manner of providing legal services and ensuring practical and timely legal services. The measures undertaken to date and further measures underway support a coordinated approach for legal services, striking the right balance of resources across corporate and operational priorities. This includes providing legal advice in a more accessible, iterative manner, and</p>

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<p>tool accessible to counsel to support their real-time advice.</p> <ul style="list-style-type: none"> To minimize the need to resort to the formalized legal advice-seeking process, NSLAG (in coordination with CSIS) must involve counsel with CSIS officers at the early stage of the planning of key or novel operations and throughout their entire operational lifecycle to case-manage an iterative legal guidance process. 	<p>have sometimes left warrant counsel unaware of emerging legal issues and that Justice has taken steps to resolve these issues.</p> <p>Finding no. 7: NSIRA finds that Justice has committed to improve its advice-giving to CSIS, including moving toward “road map” style legal advice that involves working collaboratively and iteratively with CSIS to achieve operational goals within the bounds of the law.</p>		<p>supporting Counsel through interactive training to better understand and support their work in a proactive manner.</p> <p>Justice and CSIS working together in an integrated fashion ensures that counsel are involved throughout an operation’s life-cycle, including the early stages. Early integration into operational planning supports the provision of timely and relevant legal advice as operations progress.</p> <p>Justice has already modified its liaison counsel model. Liaison counsel are experienced counsel designated to support CSIS officers across regional offices and particular operations. Enhancements to the role have resulted in liaison counsel providing timely and focused advice, supporting operational imperatives, and identifying trends and issues of concern to develop guidance documents and other practical tools.</p> <p>Justice is developing a suite of practical tools and legal service delivery mechanisms to support CSIS. These include:</p>

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			<ul style="list-style-type: none"> • a user-friendly blog that describes relevant legal issues and concepts in plain-language and with a practical application to CSIS' work; • a field guide for the practical application of legal concerns to CSIS' operations that can be used by officers in the field and in real-time; • interpretation and guidance documents; and, • knowledge management tools ensuring counsel can access legal precedents and interpretations.
Recommendation 2: NSLAG (in coordination with CSIS) develop Key Performance Indicators to measure the delivery of legal services to CSIS.	Finding no. 5: NSIRA finds that Justice does not generate the necessary business analytics to track its service delivery performance to CSIS.	Agree	Justice has developed business metrics to measure service delivery performance. Justice will continue to work with CSIS to invest in resources to conduct detailed business analytics to enhance the provision of legal services and make improvements to the existing system. Client feedback surveys are undertaken regularly.
Recommendation 3: CSIS and Justice include in their training programs interactive scenario-based training developing the operational intelligence activities expertise of NSLAG counsel	Finding no. 2: NSIRA finds that Justice legal opinions have sometimes been prepared without sufficient attention to the audience that needs to	Agree	Justice has worked with CSIS to develop and deliver interactive scenario-based training and is committed to continuing that involvement. Cross-reference recommendations 14 and 18.

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and the legal knowledge of CSIS operational staff.	understand and act on them. Opinions have been focused on assessing legal risk, often late in the development of a CSIS activity, with limited effort made to propose alternative and legally sustainable means of arriving at the intended objective.		
Recommendation 4: To ensure Justice is able to give meaningful and responsive legal advice as recommended in recommendation #1, CSIS invite Justice counsel to sit at the table at all stages of the lifecycle of key and novel operations, and that it fully and frankly brief counsel on operational objectives, intent, and details.	Finding no. 8: NSIRA finds that CSIS has not always shared all relevant information with NSLAG, prompting a degree of mistrust and limiting Justice's ability to provide responsive legal advice.	Agree	As set out above, Justice is working with CSIS to be involved sooner and more continuously across the lifecycle of operations to provide timely, focused and iterative legal services.
Recommendation 5: Justice's advice-giving must clearly and unequivocally communicate advice on the unlawfulness of client conduct, whether criminal or otherwise.	Finding no. 3: NSIRA finds that the Justice Legal Risk Management Framework is misunderstood at the working level at CSIS and further that it does not provide an appropriate framework for the unequivocal communication of unlawful conduct to CSIS.	Agree	Justice is currently undertaking a review of its legal risk framework in order to improve both how legal risk is assessed, and also how risks are communicated to clients.
Recommendation 6: CSIS adopt and share internally clear criteria for the warrant prioritization process.	Finding no. 11: NSIRA finds that there is little common understanding regarding the process or basis on which a	Agree	CSIS will further refine the warrant prioritization process and work to set clear criteria.

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	warrant is prioritized. Frequent shifts in this process of prioritization have added to operational uncertainty. The prioritization process has made it very difficult to bring novel issues to the Court with the goal of addressing legal ambiguities through court decisions		
Recommendation 7: CSIS establish a new warrant process eliminating steps that do not make a significant contribution to a more accurate application. The process should assign clear lines of responsibility for the production of accurate applications. The reformed system should ensure that delays associated with managerial approvals are minimized, and that time is reallocated to those steps contributing to the preparation of the accurate applications.	<p>Finding no.12: NSIRA finds that the actors involved in the warrant process do not have a common understanding of the rationale for each of the [multiple] of steps in the overarching warrant application scheme and are not always sure what role each approval step plays.</p> <p>Finding no. 13: NSIRA finds that the proliferation of process in seeking warrants has created a system of diluted accountability widely regarded as slow and unwieldy, with delays caused by multiple levels of approval.</p>	Agree	Work on implementation is underway. CSIS and Justice are committed to streamlining warrant applications, templates and requests as part of broader modernization objectives.
Recommendation 8: CSIS integrate the regional stakeholders (including the	Finding no. 14: NSIRA finds there is no regular feedback process in which explanations for warrant-	Agree	CSIS has already undertaken related improvements to address this recommendation, including through the

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implicated investigators) at every key milestone of the warrants process.	related decisions made at one level filter back to other levels. The absence of feedback is especially acute for the regional investigators.		updated Affiant Unit (AU) business approach to warrant acquisition, which now includes regional stakeholders.
Recommendation 9: CSIS adopt policies and procedures governing the reformed warrant process that clearly outlines roles and responsibilities of each participant and the objective of each step in the warrant process and that these policies be kept current as the process evolves.	<p>Finding no. 10: NSIRA finds that CSIS policies have not kept pace with operational reality, as they are often vague, dated, overlapping and contradictory. The absence of clear policy creates legal doubt or concerns, and gives rise to disparate interpretations of legal and operational standards.</p> <p>Finding no.12: NSIRA finds that the actors involved in the warrant process do not have a common understanding of the rationale for each of the [multiple] of steps in the overarching warrant application scheme and are not always sure what role each approval step plays.</p>	Agree	The revised CSIS-Justice Joint Policy on Duty of Candour and the associated guidance document outline the role of all CSIS employees (not just the affiants) in ensuring that disclosure obligations to the Court are met. In addition, CSIS has developed a s.21 warrant policy and the drafting of the related procedure is underway. In 2020 and 2021, CSIS provided Duty of Candour training to all operational employees through a special project.
Recommendation 10: To address the seeming inevitability of “recurring omissions”, NSIRA recommends that CSIS prioritize the development of [an improved] system for human source information	Finding no. 16: NSIRA finds that CSIS has struggled to ensure that all information material to the credibility of sources is properly contained in warrant applications.	Agree	The recommendation endorses a CSIS initiative already underway. An Action Plan approved by the Executive in January 2021 identified the requirement, and CSIS stakeholders are advancing this initiative. CSIS developed a comprehensive

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management. CSIS should continue initiatives meant to ensure that source handlers are assiduous in documenting and then reporting in source precis information going to credibility. Even with these reforms, the Affiant Unit should adopt procedures for verifying the information prepared by the regions.	This “recurring omissions” problem stems from a misunderstanding of the Federal Court’s role in assessing the credibility of sources and from the presence of multiple, siloed information management systems. CSIS has undertaken reforms, but work remains to implement long-term sustainable solutions.		requirements package, and identified a potential technical solution. The complexity of the technical development process means this will be a long process.
Recommendation 11: CSIS recognize the importance of the Affiant Unit by assigning affiants and analysts an employment classification congruent with their responsibilities.	Finding no. 17: NSIRA finds that the Affiant Unit (AU) constitutes a vital and laudable reform within CSIS. However, the AU is currently at risk of collapse. CSIS has not supported the unit with resources commensurate with the importance of this unit in fulfilling CSIS’s mission. The benefits of the AU are currently in jeopardy because of governance, human resource, and training deficiencies.	Agree	CSIS has addressed this recommendation by classifying affiants at one level above the Intelligence Officer working level to recognize the complexity of their work and to attract/retain candidates. A competitive competition process is underway to staff the affiant positions and is anticipated to be completed by the end of March 2022.
Recommendation 12: CSIS create an AU Branch reporting directly to the CSIS Director.	Finding no. 18: NSIRA finds that the AU’s placement in the [Name] branch is not commensurate with its functions and importance. This governance anomaly most likely contributes to administrative hurdles and	Disagree	The Service notes the concerns raised by the committee in its report regarding the Affiant’s Unit current placement in the organization’s hierarchy. This said, throughout the course of this review, CSIS has invested heavily in the Affiant Unit and its employees and has made

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	resource challenges faced by the AU.		significant changes to the warrant process and its governance. The Service is confident that these changes will be sufficient to address the concerns that resulted in this finding and recommendation, particularly as it relates to observations related to administrative and human resource challenges. In addition, the current placement of the Affiant Unit with other units with corresponding responsibilities for warrant acquisition best facilitates the provision of ongoing guidance and advice throughout the warrant lifecycle to ensure compliance and duty of candour obligations are met. Given its importance, CSIS commits to ongoing monitoring and evaluation of the affiant unit to ensure the concerns highlighted in the report do not re-occur.
Recommendation 13: CSIS urgently resource the Affiant Unit to meet its responsibilities and ensure its sustainability. In deciding the size of the AU, CSIS should assess how many warrants an affiant team might reasonably complete every year.	Finding no. 19: NSIRA finds that without a functional AU able to produce timely and accurate warrant applications, CSIS puts at risk access to warrants and the information collected under them.	Agree	In line with the recommendation, CSIS already increased the resourcing of the Affiant Unit and approved changes to the organizational chart in March 2021. As noted above, a staffing action is currently underway that aims to create a pool of qualified candidates which can be leveraged to help increase the Affiant Unit's capacity.
Recommendation 14: CSIS, in consultation with Justice, develop a	Finding no. 17: NSIRA finds that the Affiant Unit (AU) constitutes a	Agree	CSIS intends to provide fulsome training to the affiant unit, as recommended. In late

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comprehensive training course for all affiants and analysts, codifying best practices and methods for members of the AU.	vital and laudable reform within CSIS. However, the AU is currently at risk of collapse. CSIS has not supported the unit with resources commensurate with the importance of this unit in fulfilling CSIS's mission. The benefits of the AU are currently in jeopardy because of governance, human resource, and training deficiencies.		<p>2021, initial consultations were held to identify appropriate training. Unfortunately, the pandemic has disrupted training efforts.</p> <p>Justice is supporting CSIS in the development and delivery of comprehensive and practical training for all those working on warrant applications. Cross-reference recommendations 3 and 18.</p>
Recommendation 15: NSIRA recommends that, NSLAG be staffed by a complement of counsel and support personnel sufficient to ensure that CSIS operations are not impeded by resource limitations at NSLAG.		Agree	Justice and CSIS will continue to work together on resource and staffing issues.
Recommendation 16: The function of the Independent Counsel at the Department of Justice be eliminated, in favour of a new challenge function, analogous to the role a defence lawyer would play were warrants subject to an adversarial process, situated at Public Safety and supported by the Public Safety vetting team, and performed by a knowledgeable lawyer from the Public Prosecution Service of Canada,	Finding no. 20: NSIRA finds that the "independent counsel" (IC) role falls short of creating a thorough challenge function.	Agree	Public Safety Canada will develop an enhanced vetting function, housed in Public Safety Canada, that reflects the principles and objectives set out by NSIRA. Public Safety Canada will develop the enhanced vetting function as part of the CSIS warrant acquisition process such that it provides a meaningful challenge function without adding undue complexity or delay. While this work is underway, Public Safety Canada will take steps to

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the private sector, or elsewhere, who is independent from Justice management and not otherwise involved in CSIS warrant applications.			strengthen warrant vetting on an interim basis.
Recommendation 17: CSIS regional warrants coordinator positions receive adequate training, and that CSIS professionalize the position and enable warrant coordinators to more effectively translate the content of warrants into advice on warrant execution.	Finding no. 21: NSIRA finds that the CSIS regional warrants coordinators have not received sufficient training enabling them to translate the contents of the warrants into advice on proper warrant execution.	Agree	CSIS acknowledges the importance of training and of centers of expertise. CSIS is determining training requirements.
<p>Recommendation 18: CSIS adequately resource and regularly deliver evergreen scenario-based training programs for all CSIS employees, including:</p> <ul style="list-style-type: none"> - annual, comprehensive, warrant training for all operational employees; - specialized onboarding training for all employees not part of the intelligence officer program; and - continued long-term training for all specialized personnel. 	<p>Finding no. 22: NSIRA finds that CSIS lacks long-term training programs for Intelligence Officers.</p> <p>Finding no. 23: NSIRA finds that CSIS has failed to provide systematic training programs for “non-Intelligence Officers”.</p> <p>Finding no. 24: NSIRA finds that the CSIS’s Learning and Development Branch has not been sufficiently resourced to develop and administer comprehensive training programs, especially in specialized areas not covered by the training offered</p>	Agree	CSIS is committed to improving the training offered to all of its employees, as recommended. Scenario-based training, which helps employees understand the application of policies and procedures, is now an integral part of operational training, which includes the development of an annual operational workshop. A recently approved business case will significantly increase staffing in Learning & Development to further enable training of CSIS employees. This business case includes the creation of a new position responsible for developing an enhanced onboarding for all newly hired employees, as well as the creation of new positions to create and deliver additional learning

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	for Intelligence Officers early in their career.		opportunities for all operational employees. Cross-reference recommendations 3 and 14.
<p>Recommendation 19: The recommendations within this review be treated as a coherent package and that progress and outcomes in implementing these recommendations be tracked, allowing NSIRA, the Ministers of Public Safety and of Justice, to assess the efficacy of reforms and course correct if necessary.</p>	<p>Finding no. 9: NSIRA finds that CSIS has a history of quick reforms, followed by neglect, high turnover of personnel leading to a loss of institutional knowledge, and resourcing that did not match stated priorities. CSIS does not track or measure the outcome of past reforms adequately and has no performance metrics for assessing success.</p> <p>Finding no. 25: NSIRA finds that CSIS and Justice are at risk of not being able to fulfill their respective mandates. No one reform is likely to succeed unless each is pursued as part of a coherent package. No package will succeed unless backed by prioritization at senior levels, and the stable provision of resources, including people with the means and institutional knowledge to see reforms through. And no reform initiative will succeed unless</p>	<p>Agree</p>	<p>Public Safety, CSIS and Justice are committed to taking a holistic approach to the implementation of the recommendations, and will track and course correct as required in this complex operating environment.</p>

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	accompanied by clear performance indicators, measured and analyzed regularly to track progress.		
Recommendation 20: The full classified version of this report be shared with the designated judges of the Federal Court.		Partially Agree	The Attorney General of Canada has shared the full report, redacted for solicitor-client privilege, with the designated judges of the Federal Court of Canada.