



## **BACKGROUND ON SPYING IN CANADA: Civil Liberties Watchdog Sues Surveillance Agency Over Illegal Spying On Canadians**

### **1. What is CSEC?**

Communications Security Establishment Canada (CSEC) is Canada's national electronic intelligence agency, the Canadian counterpart to the U.S. National Security Agency (NSA).

CSEC is charged with collecting "signals intelligence," which includes the secret collection of electronic communications for the purpose of advancing Canadian interests in defence, security and international affairs.

CSEC's operations are shrouded in secrecy. As former CSEC chief John Adams recently admitted: "[t]here's no question that CSEC is very, very biased towards the less the public knows the better".<sup>1</sup>

CSEC has doubled its personnel and budget in the last decade. It now spends \$350 million in tax-payer money every year. CSEC's new 72,000 square meter state of the art headquarters will cost Canadians over \$1 billion dollars.

After the events of Sept. 11, 2001, the electronic eavesdropping agency was also given unprecedented new powers to intercept the private communications of Canadians and was directed to collect private information about citizens. CSEC is required to have policies in place to protect the privacy of Canadians, but it has not provided those policies to Canadians.

### **2. Does CSEC spy on Canadians?**

CSEC uses secret ministerial authorizations to read Canadians' emails and text messages, and listen to their phone calls, when Canadians are communicating with someone outside the country. CSEC also collects personal information about Canadians

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<sup>1</sup> See CBC News article at <http://www.cbc.ca/news/politics/spy-agency-csec-needs-mps-oversight-ex-director-says-1.1928983>

under secret ministerial directives. The BCCLA says that these activities mean that CSEC is spying on Canadians and that the CSEC's protestations to the contrary are questionable.

### **3. What is a ministerial authorization?**

Unique to CSEC, Part V.I of the *National Defence Act* allows the Minister of National Defence to authorize CSEC spy operatives to intercept the private communications of Canadians. The authorization is applied when a person inside of Canada is communicating with a person outside of the country.

Without the authorization scheme, eavesdropping on the private communications of Canadians would constitute a serious criminal offence under the *Criminal Code*.

The authorizations are very broad and do not specify who will be targeted, or what information is to be intercepted or what will be done with the information once it is gathered.

Ministerial authorizations are valid for up to 12 months and can be renewed indefinitely. CSEC has taken the position that ministerial authorizations are classified documents and has kept their content and use secret. The agency has not notified those Canadians whose private communications have been intercepted as a result of a ministerial authorization, nor has it told Parliament how many Canadians have been spied on using a ministerial authorization.

### **4. What information can the CSEC collect under a ministerial authorization?**

A ministerial authorization permits CSEC to intercept the private communications of Canadians when a Canadian communicates with a person outside Canada.

Private communications are oral communications or telecommunications that are intended to be private. For example, using a ministerial authorization, CSEC can read the content of emails and text messages, listen to the content of phone conversations, and watch video chats.

### **5. Why is the BCCLA concerned about ministerial authorizations?**

The ministerial authorizations give CSEC unprecedented powers to intercept the private communications of Canadians without any judicial oversight. This is a serious departure from the safeguards that protect Canadians from domestic spying and police agencies, such as CSIS and the RCMP. Those agencies must seek judicial warrants before intercepting the communications of Canadians.

The Minister's authorizations permit for the broad collection of Canadians' personal communications. The Minister is permitted pursuant to the [National Defense Act, section 273.65\(2\)](#) to authorize this broad collection of Canadians' personal communications if he is satisfied that the following criteria are met:

- (a) the interception will be directed at foreign entities located outside Canada;
- (b) the information to be obtained could not reasonably be obtained by other means;
- (c) the expected foreign intelligence value of the information that would be derived from the interception justifies it; and
- (d) satisfactory measures are in place to protect the privacy of Canadians and to ensure that private communications will only be used or retained if they are essential to international affairs, defence or security.

The Minister's determinations are made in secret and are not reviewable by the Canadian public. Unchecked government surveillance presents a grave threat to democratic freedoms. The BCCLA is deeply concerned that CSEC is gaining secret, illegal access to the content of communications of ordinary Canadians, and there are no reasonable safeguards in place to monitor its activities.

## **6. What is the Ministerial Directive on the Collection and Use of Metadata?**

The Ministerial Directive on the Collection and Use of Metadata – a secret decree not scrutinized by Parliament - was originally issued by the Minister of National Defence in 2005, and was reissued again by the Minister in 2011.

This secret ministerial directive allows CSEC operatives to collect, review, analyze and use metadata produced by Canadians.

## **7. What is metadata?**

Metadata is information that is automatically created every time an email or text message is sent, every time a mobile phone call is made, every time the internet is searched. The purpose of metadata is to identify, describe, manage or route the message, phone call or data.

For example, the metadata information attached to a mobile phone conversation would describe the phone number of the caller, the phone number of the recipient, the time and date of the call, and the length of the conversation. The metadata associated with an email would include the email address of the sender, the email address of the recipient, the time it was sent and the size of the email.

## **8. Why is BCCLA concerned about the collection of metadata?**

The collection of metadata is digital surveillance. CSEC spies on Canadians by collecting information every time an email or text message is sent, every time a phone call is made, every time the internet is accessed. CSEC can collect, retain and analyze this personal information to create a picture of a Canadian and his or her relationships with other Canadians.

This digital spying is conducted without any real oversight or accountability. CSEC doesn't report its activities to Parliament or to the Canadian public. This kind of widespread surveillance without accountability is fundamentally incompatible with Canadian democracy.

## **9. What information does the CSEC share with agencies in other countries?**

CSEC is a member of the "five eyes" intelligence communities, which include the United Kingdom, New Zealand, Australia, and the United States. CSEC shares information with those intelligence communities, but has not told Canadians what information it shares or whether it shares information it collects about Canadians.

## **10. How big is CSEC staff and budget?**

The organization employs approximately 2,000 people and has an annual budget of approximately \$250 million.

## **11. What kind of oversight is there for CSEC?**

There is no court or committee that monitors CSEC's interception of Canadians' private communications and metadata information, and there is no judicial oversight over its sweeping powers.

The Office of the CSEC Commissioner is the only government office charged with reviewing the activities of the CSEC. The CSEC Commissioner reports to the Minister of National Defence. The "micro agency," as it was recently called by the out-going CSEC commissioner, has a budget of roughly \$2 million dollars and a staff of eight people. For most of its history, the Commissioner's office did not have independent funding and was a line item in the budget of the Department of National Defence until 2007.

The Commissioner does not review CSEC's spying activities before they occur. His review is limited to the activities CSEC has already undertaken, sometimes years in the past.

The Office of the CSEC Commissioner has raised concerns about CSEC's domestic spying activities. For example, since the enactment of the *Anti-Terrorism Act* in December 2001, the Office of CSEC Commissioner has repeatedly recommended to the Minister of National Defence and to the Attorney General of Canada that the law be amended to clarify the legal requirements to intercept Canadians' private communications. No such amendments have been enacted.

#### **12. Why did the BCCLA file this lawsuit?**

This lawsuit calls on the government to state clearly who it is watching, what is being collected and how it is handling Canadians' private communications and information. The BCCLA filed this lawsuit to uphold the constitutional rights of Canadians, which include implementing safeguards to protect the privacy rights of all Canadians.

#### **13. Where can I learn more about the BCCLA's lawsuit?**

Read more about the BCCLA's lawsuit and access documents filed in the case at <http://bccla.org/stop-illegal-spying/>

#### **14. What is the OpenMedia.ca campaign?**

OpenMedia.ca has launched a [national public outreach campaign](#) calling on all Canadians to show their support for the court challenge launched by the BCCLA. OpenMedia.ca is Canada's largest civic engagement organization that works to ensure the Internet is open, affordable, and surveillance-free.

Canadians are invited to stand with the BCCLA and show their support at [https://openmedia.ca/csec?utm\\_source=bccla&utm\\_medium=email&utm\\_campaign=privacy](https://openmedia.ca/csec?utm_source=bccla&utm_medium=email&utm_campaign=privacy)

OpenMedia.ca and the BCCLA are also part of a recently launched broad-based [Protect Our Privacy Coalition](#) of citizens, experts, organizations, and businesses who have come together to protect the privacy of every resident of Canada against intrusion by government entities.