

NSA's Canadian counterpart runs massive domestic spying program

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On the basis of secret government directives, Canada's national security apparatus is conducting mass surveillance of Canadians parallel to, if not directly patterned after, the domestic spying operations of the U.S. National Security Agency (NSA).

Communications Security Establishment Canada (CSEC), the NSA's Canadian counterpart and longstanding partner, has been scrutinizing the metadata of Canadians' electronic communications since at least 2005.

Moreover, the NSA routinely provides Canada's security agencies with intelligence on Canadians and CSEC reciprocates by providing U.S. intelligence officials with information about people living in the U.S. This arrangement allows both agencies to circumvent legal bans on warrantless surveillance of their own citizenry's communications.

It was "common" for NSA "to pass on information about Canadians," Wayne Easter, Canada's Solicitor-General in 2002-3, told the *Toronto Star* this week. As Solicitor-General, Easter was responsible for overseeing the operations of the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP).

The extent and scope of CSEC's spying and who is being targeted and why are all zealously guarded state secrets. The CSEC functions under secret directives issued by the Minister of Defence—directives whose very existence is unknown to parliamentarians, let alone the public at large.

The Conservative government has responded to this week's slight and very partial lifting of the veil on CSEC activities with a campaign of disinformation, dissembling and lies. This campaign has been facilitated by the opposition parties, especially the ostensibly leftwing New Democratic Party, and the corporate media; they have made no more than tepid calls for greater transparency about the CSCE's spying.

On Monday, the *Globe and Mail* reported that in November 2011, Defence Minister Peter MacKay signed a secret directive authorizing the CSEC to continue its "mining" of the metadata of Canadians' telephone and

internet communications. The *Globe* said the program had been first authorized by Bill Graham, Defence Minister in Paul Martin's Liberal government, in 2005, that is six years earlier.

MacKay, like U.S. President Barack Obama, responded to this revelation of massive state spying by flatly denying that CSEC is "targeting" Canadians or violating constitutional prohibitions on warrantless surveillance of their communications. This lie is predicated on the drawing of a spurious distinction between the metadata created by any electronic communication and the rest of the communication and on the transparently false claim that such information is innocuous.

According to the *Globe*, a briefing prepared for MacKay in 2011, presumably by CSEC or lawyers within his department, declared, "Metadata is information associated with a telecommunication ... And not a communication."

In fact metadata—which includes such information as the source, destination and duration of a telephone call—is intrinsic to any electronic communication. By systematically gathering and analyzing such metadata, the U.S. and Canadian national-security apparatuses can rapidly build up detailed profiles of targeted individuals and groups, including identifying everything from their associates, to where they work, bank, and shop, and what websites they visit.

In the course of his efforts to cover-up the scope and purpose of CSEC's metadata mining, MacKay did make one revealing admission. In response to a question about the mass surveillance of Canadians' communications, MacKay told Parliament, "I have a heads-up for the member ... This is something that has been happening for years."

Government sources, many of them unnamed, sought, meanwhile, to refute the *Globe*'s claim that there had been serious questions within the state apparatus about the constitutionality of the CSEC's "metadata" mining of Canadians' communications. In its Monday report, the *Globe* said that in 2008 the then CSEC Commissioner—that is the head of the government-appointed "watchdog"

charged with ensuring the agency does not go beyond its legal mandate—had cautioned that the program could be violating Canadians constitutional rights and, because of his concerns, the metadata mining program was suspended for more than a year.

Sources from within the government and CSEC dispute this. They say that the questions raised by Charles Gonthier—a former, now deceased former Supreme Court Justice—concerned only a small part of a much larger program, that only this part of the metadata mining program was ever suspended, and then only very briefly.

The current CSEC Commissioner has publicly defended the mass surveillance and claimed that his predecessor likewise believed that the CSEC has every right to spy on Canadian's electronic communications. In an e-mail statement to the *Toronto Star*, Ryan Foreman, a spokesman for CSEC Commissioner Robert Decary, said, "The commissioner never questioned the legality of CSEC's metadata activities."

MacKay and the government have also sought to shield CSEC's actions from public scrutiny by insisting that it is solely devoted to gathering foreign intelligence and, as MacKay told Parliament last Monday, "is specifically prohibited from looking at the information of Canadians." This is an obvious falsehood and not just because warrantless metadata mining is a form of spying.

CSEC's government mandate stipulates—as MacKay well knows since he has been the minister responsible for overseeing its work for the past seven years—that it "provide technical and operational assistance" to CSIS, the RCMP and other domestic security-intelligence and law enforcement agencies "in the performance of their lawful duties." Furthermore CSEC can seek authorization from the Defence Minister to capture and read the communications of Canadians who are in some way connected to its foreign intelligence targets. As the *Toronto Star*'s Thomas Walkom has observed, "In 2011-12, the last year for which figures are available, eight such ministerial authorizations—all of unknown size and scope—were in play."

While vigorously defending CSEC's metadata spying, the government has been anxious to put on a record that CSEC does not have access to the NSA's PRISM Program and has not been using it as a means of monitoring Canadians' communications. Under PRISM, NSA agents are able to directly access the servers of the most important U.S. based internet companies, including Microsoft, Apple, Google, and Facebook.

The government's claims concerning the CSEC and PRISM are not credible. The CSEC has been a close partner of the NSA, sharing intelligence information with it on a daily basis, for more than six decades.

Britain, which like Canada, is part of the "Five Eyes"—a consortium formed in the late 1940s by the NSA, CSEC, and the signals communications agencies of Great Britain, Australia and New Zealand to jointly monitor global communications—has already said that it obtained intelligence about Britons through PRISM.

The NSA and CSEC, as the spurious distinction they have made between electronic communications' metadata and rest of the communications illustrates, can and do create pretexts and mechanisms to illegally circumvent constitutional prohibitions.

Last but not least, whatever the validity of MacKay's denial about spying on Canadians through PRISM, it only concerned CSEC. As Easter's comments cited above demonstrate, Canada's security agencies have long been the recipients of intelligence on Canadians from the NSA as part of longstanding Canada-U.S. intelligence-sharing agreements and partnerships.

The CSEC is part of a growing state within the state whose operations are hidden from the public. Till this week most Canadians had never heard of the CSEC and even now they knew very little about its activities. When Defence Minister MacKay renewed by secret ministerial order CSEC's authorization to spy on Canadians' electronic communications in November 2011 he issued six other secret ministerial directives to CSEC—none of whose subject let alone contents has been publicly revealed.

As in the United States, Canada's elite has used the so-called war on terror to justify Canada's participation in a series of imperialist wars, massively expand the national-security apparatus, and adopt laws that attack core democratic rights.



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