

Canada's spy agencies illegally collected and shared personal information

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Canada's two major spy agencies, the Canadian Security Intelligence Service (CSIS) and the Communications Security Establishment (CSE), have been illegally obtaining personal information about the population and sharing data with their partners in the US National Security Agency-led "Five Eyes" alliance without the required authorization. These long-suppressed revelations emerge from reports of the intelligence services' oversight committees that were presented to parliament last week.

The report from the Security and Intelligence Review Committee (SIRC), which is responsible for overseeing CSIS, revealed that the domestic intelligence agency illegally obtained information on individuals from the Canada Revenue Agency, the country's tax authority. The information was accessed without a court warrant on numerous occasions, and even after CSIS assured the federal courts and government ministers that the information had been removed from its system, CSIS retained it on one of its databases.

CSE Commissioner Jean-Pierre Plouffe reprimanded the signals intelligence spy agency for disclosing metadata from Canadians' communications in 2013 to its "Five Eyes" allies, the NSA and the eavesdropping agencies of Britain, Australia and New Zealand. In an unprecedented briefing to the media, CSE officials sought to portray the illegal sharing of Canadians' metadata as an unintended lapse caused by a software glitch.

Defence Minister Harjit Sajjan, who is responsible for CSE's activity, also sought to downplay the breach, claiming that the eavesdropping service had stopped sharing such information and would not resume the wholesale transfer of information relating to foreign communications with Canadians until the government was convinced regulations were in place ensuring no information about Canadians could be accessed. Sajjan refused to confirm the number of Canadians affected by the breach, arguing in a truly Orwellian manner, "I can't give you the actual number, because the way I am informed is that ... we would be violating the law in digging up that type of information."

Such attempts at damage control are particularly disingenuous coming from a Liberal government which made opposition to certain elements of the draconian Bill C-51 a key

component of its election campaign last year. While media coverage of the revelations has focused on the fact that the previous Conservative government was informed about both violations but chose not to disclose them to the public, the reality is that the Liberals have been in power for almost three months but did nothing to notify the public about the serious violations of their rights. Sajjan even acknowledged that he was informed about CSE's illegal sharing of metadata last year, shortly after becoming the Defence Minister.

The intelligence agencies have long held the position that metadata does not constitute private correspondence, meaning that accessing it should not be considered illegal. This reactionary line of argumentation represents a major threat to Canadians' privacy and to their political rights, since it is possible to find out a vast amount of information about a person's life, social connections, political beliefs, and other online activity by examining metadata, which includes email addresses, Internet URLs, chat messenger service information and cell phone numbers.

The SIRC report pointed out that CSIS has consistently avoided informing the courts about its practices in dealing with metadata. Several years ago, CSIS decided that the metadata of communications could be kept, even if it was legally obliged to destroy the communications themselves. SIRC said that the court issuing the warrant to legalize the initial collection of the communications was never informed about the retention of the metadata. "SIRC was given no indication that the Service was fully transparent with the Federal Court about the nature and scope of its activities with respect to metadata," it wrote.

The reassuring noises made by the review bodies, government ministers and the intelligence agencies themselves cannot be taken at face value. SIRC and the CSE are largely toothless oversight bodies staffed by carefully vetted political appointees who are responsible to the government, barred from revealing the details of any wrongdoing they do uncover, and specifically denied the right to investigate the ever-growing collaboration between CSIS and the CSE.

The glacial pace of the "review" system is demonstrated by the fact that the incidents exposed last week took place almost two years ago but were hushed up until now. In addition, although SIRC issued a "recommendation" to CSIS that it

make clear to judges what its metadata practices are, the intelligence agency responded by rejecting the finding and insisted they had provided the courts with sufficient information. This is in keeping with the publicly stated view of the previous government that metadata is not constitutionally-protected communications, and therefore can be accessed by the intelligence agencies without any court approval. (See: Canada's government curtly dismisses concerns over blanket spying)

Canada's spy agencies have a long record of violating the law to take full advantage of the vast surveillance powers they were granted by Jean Chretien's Liberal government in the wake of the 9/11 terrorist attacks. In November 2013, it was revealed that both spy agencies had systematically lied to the courts for years in order to obtain at least 35 warrants enabling CSE to enlist the support of its "Five Eyes" partners to spy on Canadians when they went abroad.

In the wake of the 2001 terrorist attacks, Canada's national security apparatus also developed an intimate collaboration with its US counterpart in the rendition of suspects to third countries. This included the creation of Canada's own rendition program, under which CSIS and the RCMP instigated the arrests of Canadians travelling abroad then supplied authoritarian regimes in the Middle East and North Africa with information on allegations against them for use in combination with "enhanced interrogation techniques," i.e. torture.

The latest revelations about CSIS's illegal gathering of information came just two weeks after damning evidence emerged in a British Columbia courtroom on the role the intelligence service played in entrapping a couple in an alleged terrorist plot to attack the BC legislature. BC Court Justice Catherine Bruce ruled in favour of the release of the transcript of conversations between CSIS and a "human source," who allegedly played a major role in radicalizing John Nuttall.

"If there (redacted) was a human source then that raises serious issues about the potential role of CSIS in inciting the applicants to commit terrorist acts," Nuttall's lawyer, Marilyn Sandford, argued in calling for the release of the document. She noted that Nuttall said the alleged CSIS operative "strongly encouraged him on many occasions to engage in violent terrorist acts and played a significant role in (his) radicalization."

The July 2013 arrest of Nuttall and his partner, Amanda Korody, was used by Stephen Harper's Conservative government as grist for the mill of its narrative that Canada was a society facing an existential threat from Jihadi terrorism which required extending unprecedented police state powers to the national security apparatus.

The Conservative government subsequently exploited the October 2014 attack on Parliament Hill to ram through a raft of measures expanding the powers of the intelligence agencies. Bill C-51 grants CSIS carte blanche to actively intervene to "disrupt" vaguely defined "threats to national security." Under

Bill C-51, CSIS and the rest of Canada's national security apparatus have also been given free access to all information held by up to 17 government agencies on individuals deemed to be persons of interest by Canada's security agencies. This could include people who merely travelled to a strife torn country like Pakistan. The law also established a new criminal offence of promoting "terrorism" in general.

The Liberals voted in favour of this vast assault on basic democratic rights, but sought to appeal to the widespread popular opposition to the police state powers by pledging to make minimal reforms to the legislation if they came to power. Trudeau denounced the New Democratic Party (NDP), which chose after much hesitation to oppose Bill C-51, for "scare mongering" for making limited warnings that the legislation vastly increases the powers of the state to suppress political opposition.

Like Sajjan, Liberal Public Safety Minister Ralph Goodale was quick to minimize the latest revelations about CSIS and CSE lawbreaking, "We believe more can be done to strengthen scrutiny," said Goodale, "and the government is currently developing legislation that will strengthen our system of accountability for national security."

The Liberals' main alteration to Bill C-51 is expected to be the inclusion of a mechanism for parliamentary oversight of the intelligence agency's actions. Nobody should be under any illusions that this will do anything to check the mass surveillance practiced by CSIS and CSE. Canada is the only one of its "Five Eyes" allies not to have formal legislative oversight of its intelligence agencies, but this provision has done absolutely nothing to hinder the vast array of spying activities carried out against the populations in the United States, Britain, Australia and New Zealand, which were exposed in 2013 by NSA whistleblower Edward Snowden.



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