

Canadian spy agency concealed mass data intelligence-bank from courts

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In a damning ruling issued last Thursday, Federal Court Judge Simon Noel sharply criticized the Canadian Security Intelligence Service (CSIS), the country's premier spy agency, for concealing the existence of a mass data collection program for over a decade.

CSIS established the Operational Data Analysis Centre (ODAC) in July 2006. The facility gathers metadata on a vast and unspecified number of Canadians, including email addresses, telephone numbers, and IP addresses of anyone who has been in contact with a person targeted by CSIS. This information is kept indefinitely, even after the targeted individual is no longer deemed a threat to national security.

In his ruling, Noel pointed to the extraordinary fact that, despite being tasked with authorizing CSIS warrants for data collection, the courts had no idea ODAC existed. "The Court had never before been fully informed of the existence of the program. The Court, during the hearings, learned that the program had been in existence since 2006 yet it had never heard nor seen any evidence on the matter," he stated.

The judge emphasized that this represented the second time in three years CSIS had breached its "duty of candour," i.e. had lied, to the courts. In 2013, Justice Richard Mosley found that CSIS systematically lied for years in a series of applications it made to the courts to secure authorization for wiretapping operations. The domestic spy agency had failed to disclose that it was collaborating with CSE (Communications Security Establishment), Canada's foreign signals intelligence service, which is part of the NSA-led "Five Eyes" alliance and is formally prohibited from collecting information on Canadians.

CSIS director Michel Coulombe released a statement in which he insisted that politicians were informed about the work of ODAC. "The creation of ODAC ... was presented to the Minister of Public Safety in July, 2006, explaining the requirement for advanced analytics and the ability of ODAC to retain data, including metadata, for extended periods of time," Coulombe said. "The minister was also briefed on the program in March, 2010."

Coulombe added that all access to the illegally collected

data has been halted. Significantly, however, the store of metadata has not been destroyed, but continues to be expanded because CSIS has other means of increasing its volume. Provisions in Bill C-51, passed by the Harper Conservatives with the support of the Liberals in 2015, mean that CSIS can collect data from 17 government departments without a warrant, including the Canada Revenue Agency, the border service and CSE. As Noel noted, this meant CSIS now has free access to such information as Canadians' tax returns.

Stockwell Day, the former Conservative Public Safety Minister in the first Harper government, claimed ignorance of the program in an interview with CBC. Current Liberal Public Safety Minister Ralph Goodale asserted he only became aware of CSIS' illegal activities several weeks ago when he received a version of Noel's judgement.

Such denials are hardly credible. Concern about the indefinite holding of metadata was first raised in a Security Intelligence Review Committee (SIRC) report issued in January. SIRC is the watchdog tasked with overseeing CSIS' activities and is made up of government appointees. In a further report issued this fall, SIRC accused CSIS of breaching the condition that it only collect data which is "strictly necessary," saying instead that the intelligence agency was ingesting data in bulk.

The court ruling confirmed that Day was briefed on the operation in July 2006. While no information has yet been made public on what Goodale knew, even New Democratic Party (NDP) public safety critic Matthew Dub   felt obliged to note that it was highly likely he was briefed upon taking office. The NDP made a show of opposing Bill C-51 during the 2015 election, while at the same time offering to participate in a coalition government with the Liberals, who played a key role in instituting much of Canada's draconian anti-terror legislation and backed the anti-democratic Bill C-51 at every stage during its passage through parliament last year.

Regardless of what precise details were known by politicians, responsibility for the systematic violation of the

law and the privacy rights of Canadians by CSIS lies with successive governments for granting vast and unprecedented powers to the national security apparatus. In the immediate aftermath of the 9/11 attacks, the Chretien-Martin Liberal governments implemented anti-terrorist legislation that undermined longstanding democratic principles such as habeas corpus and the right to remain silent.

In relation to the collection of information, a doctrine was developed by the Conservative government that metadata from Canadians' emails, cellphones and internet use is not constitutionally-protected private communication and is thus fair game for the intelligence services. Government spokesman repeatedly claimed that metadata is innocuous, yet it is universally recognized by computer and security analysts that the collection and analysis of metadata enables state spy agencies to construct an extremely detailed picture of the day-to-day activities and beliefs of anyone under surveillance.

Under Bill C-51, CSIS was granted "disruption powers," allowing the agency to break virtually any law in actively intervening to "disrupt" vaguely defined public security threats, so long as they don't deliberately cause "bodily harm" or violate someone's "sexual integrity."

One of the few limitations placed on CSIS' disruption powers is the requirement it obtain a court warrant if any of its planned disruption operations breaches the Criminal Code or Charter of Rights and Freedoms. The latest revelations only demonstrate how worthless such a provision is, given that the spy agency routinely lies and deceives the courts.

Trudeau's Liberals, aware of the deep-seated hostility to such authoritarian powers, feigned opposition to the Bill C-51 but still voted in favour of it in parliament. Trudeau proclaimed during the election campaign that a Liberal government would repeal several of the legislation's most controversial aspects and establish a special parliamentary committee to provide "oversight" of the intelligence agencies.

More than one year after taking power, the only concrete step the Liberals have taken toward realizing these bogus promises is to introduce a bill creating an oversight committee, staffed with carefully vetted parliamentarians, with severely limited rights to review past intelligence operations.

Any other steps have been delayed pending the outcome of the phony public consultation that Goodale announced in September. The document the government issued to guide this "consultation" fully embraces the reactionary "war on terror" narrative that successive Liberal and Conservative governments have used to justify a series of bloody military interventions around the world and attacks on democratic rights at home. It also lauds the intelligence agencies as

bastions of democracy. The document's introduction dishonestly proclaims, "National security institutions in Canada are professional, responsible and effective in the work they do. They work within a well-defined set of legal authorities and respect Canadian law." (See: Canada's Liberals defend "war on terror," spy agencies in Bill C-51 consultation)

Goodale's reaction to the latest revelations was decidedly low key. While issuing an obligatory slap on the wrist to CSIS, mainly for public consumption, he made no call for the removal of Coulombe or any other senior intelligence figures despite their systematic violation of the law.

Instead, he released a statement in which he suggested the Liberals may be prepared to further undermine democratic rights so as to permit CSIS's Orwellian activities to be deemed legal. "The CSIS Act is now more than 30 years old and showing its age as global affairs, threat profiles, technology and public expectations have rapidly evolved," Goodale wrote in his statement.

The response of SIRC makes a mockery of the Liberals' claims that parliamentary oversight will do anything to restrain the intelligence agencies. The watchdog agency charged with monitoring CSIS activities first drew attention to the illegal holding of metadata in January 2016, i.e. almost a decade after the practice began.

In response to the court ruling, SIRC chairman Pierre Blais expressed his full confidence in Coulombe, issuing a statement declaring, "he's doing a good job" and insisting that the head of CSIS had not deliberately misled the courts.



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