

# Trudeau government appeals ruling on illegal actions of Canada's secret police

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Justin Trudeau's Liberal government is appealing a May 15 judgment against the Canadian Security Intelligence Service (CSIS). Rendered by Judge Patrick Gleeson, the ruling concerned numerous cases in which CSIS obtained Federal Court warrants authorizing intrusive surveillance by hiding from the court that the information supporting its warrant requests had been obtained illegally.

According to press reports, Judge Gleeson's 151-page decision highlighted seven cases where CSIS acted in this manner. But the number of cases was clearly higher, since according to the same reports, the current CSIS director, David Vigneault, had personally approved more than 10 operations involving "potentially illegal activities."

Although all details of the seven cases were expunged from the public version of Gleeson's decision, which was released on July 16, it appears that they all related to efforts by CSIS to infiltrate Islamist terrorist groups in Syria (and perhaps elsewhere in the Middle East) in order to obtain information about Canadians who may have joined their ranks. By paying members of these groups to spy on its behalf, CSIS violated—and knew it was violating—Anti-Terrorism Act prohibitions on the financing of terrorist activities.

Judge Gleeson's decision was the result of an investigation ordered by the Federal Court on the basis of suspicions that CSIS and government lawyers had systematically withheld information in violation of their "duty of candour"—in other words, that they had lied.

"Having approved operations that were on their face illegal," the ruling stated, "the service then collected information which in turn was put before this court in support of warrant applications, without notifying the court of the likely illegality."

This is the third time in recent years that the Federal Court has ruled that CSIS lied to it. In the 2016 Related Data case, the Federal Court concluded that it had unknowingly issued warrants on the basis of information obtained illegally from an extensive metadata collection and retention program.

The case of the illegal terrorist informants involved not only CSIS and government lawyers, but also unnamed top government officials who authorized operations they knew to be illegal. This included senior personnel within the Department of Justice and the Privy Council Office, which directly advises the Prime Minister and oversees the implementation of his decisions.

"The circumstances," Gleeson continued in his judgment, "raise fundamental questions relating to respect for the rule of law, the oversight of security intelligence activities and the actions of individual decision-makers."

With the blessing of the Justice Department, CSIS persisted in these illegal operations and deliberately concealed them from the court in

order to obtain warrants long after the department's own lawyers had officially determined in January 2017 that they were illegal.

Vigneault sought to exonerate himself by saying that when he took office as head of CSIS, in June 2017, he wasn't properly informed of the controversy surrounding these operations. Briefly interrupted after they were deemed illegal, the operations were resumed with the sanction of the department of justice in March 2017.

In press releases issued on July 16, the Trudeau government and CSIS indicated that they would accept Judge Gleeson's decision, while seeking to minimize and justify what happened. They presented the illegal actions as a minor technical infraction, and glossed over the fact that CSIS and the government had systematically lied to the court.

CSIS claimed that in paying informers it was only doing what every other intelligence agency does, and the Ministers of Public Security and Justice, Bill Blair and David Lametti, asserted that "at no time was the safety of Canadians at risk, nor were our rights and freedoms." As if the government and the premier intelligence agency breaking the law and lying to the courts does not constitute an arrogation of state power and thus implicitly threaten and violate Canadians' rights.

All this is now compounded with the Liberal government's attempt to overturn Gleeson's ruling. This can only be interpreted as an invitation to the national security apparatus to continue to lie to the courts.

The government appeal is all the more remarkable in that Judge Gleeson did little more than issue a public reprimand to CSIS and their government overseers. He refused to impose any consequences on them for breaking the law and lying to the court. Nor did Judge Gleeson rule that any evidence that the state had obtained illegally should be declared inadmissible in any future court cases. Instead, he developed a pseudo-legal test that gives judges full discretion to accept the evidence if it is in the "interest of the community [because of] the seriousness or imminence of a threat to the security of Canada."

Judge Gleeson's sole "corrective" was to recommend the government order a thorough investigation of CSIS's adherence to and attitude toward its "duty of candour." The desired review will never take place, as evidenced by the federal government's decision to appeal the judgment rather than order a review of CSIS's adherence to the law.

The timidity of Justice Gleeson's judgment is not surprising. The handful of Federal Court judges appointed to hear national security cases behind closed doors are fully integrated into Canada's security apparatus. Their role is to provide judicial cover for a reactionary service whose main task is to monitor and spy on the Canadian

population so as to defend Canadian capitalism and its state.

This explains the judge's sympathy for the spies and their lawyers, whom he criticized above all for "breaking the bond of trust between the Court and CSIS and its lawyers." The anti-democratic implications of the gross violation of the rights of Canadian citizens by CSIS are not worthy of mention in the judgment, other than a reference or two, rhetorically, to the importance of the "rule of law."

In the end, the judgment, which was released to the media by the Federal Court despite the secrecy that normally surrounds national security matters, was a public relations ploy by the Canadian state. Accordingly, Judge Gleeson issued several warnings to CSIS that such behaviour would "undermine public confidence in the [Canadian Security Intelligence] Service" as a "vital national institution."

The real objective of the section of the establishment on whose behalf Judge Gleeson speaks is not to "reform" CSIS or even to end its illegal practices. Rather, its goal is to ensure that CSIS works even more closely with the Federal Court to foster the "democratic" image of the national security apparatus among Canadians, so the intelligence agency has the greatest latitude in carrying out its function as a key instrument to surveil and repress social opposition to the government, the capitalist elite, and its agenda among the population in general, and especially the working class.

As the COVID-19 pandemic continues to rage across Canada, exacerbating social inequalities and class tensions, there is great concern in ruling circles that opposition to its right-wing policies is taking increasingly militant forms.

The Trudeau government intends to confront this challenge by continuing to increase the powers of the security forces, while camouflaging its anti-democratic actions, as it has done since coming to power in 2015, with phony "progressive" posturing. Its ability to do so, despite implementing a massive military spending increase, further integrating Canada into Washington's military-strategic offensives around the world, slashing tens of billions from health care spending, and spearheading a homicidal back-to-work/back-to-school policy amid the coronavirus pandemic, is entirely bound up with the support it receives from the trade unions and NDP.

Just before the 2019 election, which saw Trudeau reelected as leader of a minority government, the then Liberal-controlled Parliament passed Bill C-59, an Act on Matters of National Security. This legislation expands the repressive powers of the state, particularly those of CSIS and the Communications Security Establishment (CSE). Canada's primary foreign surveillance agency, CSE connived with CSIS in the illegal retention and use of metadata that was the object of the Related Data case.

Bill C-59 was promoted as a democratic reform of the law the Harper government passed in 2015, with Liberal support, that in the name of "fighting terrorism" gave vast new powers to Canada's national security apparatus. However, Bill C-59 retains the fundamental provisions of Harper's law—whose powers were so sweeping that even the *Globe and Mail* termed it a "police state" bill—while adding further anti-democratic measures.

One of the most important changes made by Bill C-59 was to give almost absolute immunity to CSIS agents who violate Canadian laws in the course of their operations. This means that since the Liberals' legislation came into force on June 21, 2019, the criminal activities revealed by Judge Gleeson are perfectly legal.

In order to hide the reactionary nature of its new legislation, the Trudeau government has touted the creation of so-called review mechanisms, including an intelligence commissioner and the National

Security and Intelligence Review Agency.

However, as the WSWs explained in its analysis of Bill C-59, these mechanisms, like the Federal Court, "are nothing more than a fig leaf, aimed at providing the intelligence agencies with a legal-constitutional cover." They have no binding power over CSIS and they conduct their "watch-dog" oversight activities in complete secrecy, well beyond the eye of Parliament, let alone public scrutiny.

Judge Gleeson wrote that their predecessor, the Security Intelligence Review Committee, had been well aware of CSIS's illegal activities for several years, but had neither succeeded in stopping them nor seen fit to reveal them to the public.

In November, shortly after the Trudeau government announced its appeal of Gleeson's judgment, it let it be known that it is exploring the possibility of creating a centre to facilitate the declassification of historical Canadian secret service documents. This was an obvious attempt to deflect attention from the government's cover-up and complicity in CSIS's ongoing crimes.

Were such a body to be created, it would be used to project a false image of transparency, and, as indicated by comments from various "security experts," to glorify the country's intelligence agencies.

The "security experts" quoted in the media criticized Canada for lagging behind its allies in disclosing historic national security and intelligence files, while suggesting that a declassification centre would strengthen public support for CSIS and other arms of the state security apparatus by raising "Canadians' awareness of the practice, importance and challenges of national security."

Like the Gleeson ruling, "sensitizing" Canadians to a glorified history of CSIS and its predecessor, the RCMP Security Service, is part of the ruling elite's preparations to suppress any mass movement in opposition to austerity, imperialist aggression, and its prioritizing of profit over human lives amidst the worst pandemic in a century.



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