

07 Oct 2009

## ADVICE FOR THE MINISTER

### CSE – FOREIGN SURVEILLANCE

**ISSUE:** The decision taken by the Federal Court to allow the Canadian Security Establishment to implement intrusive investigative techniques and information collection on Canadian citizens travelling abroad broadens the powers of Canada's intelligence community considerably. How is this Government ensuring that the rights of Canadians are being protected?

- CSEC is mandated to provide technical and operational assistance to federal law enforcement and security agencies, including CSIS.
- In providing this assistance, CSEC is subject to any limitations imposed by law on the organization it is assisting. Any such assistance is also subject to review by the CSE Commissioner.
- All information under the warrant belongs to CSIS.

**BACKGROUND: CSE – FOREIGN SURVEILLANCE**

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– On 7 Oct 09, the media reported on the release of Federal Court Justice Richard Mosely's ruling which explains his Jan 09 decision to allow CSE to assist CSIS in monitoring the activities of two Canadians travelling abroad.

Responsible Principal(s): CSEC

Contacts:

Ewa Petruczynik (D Parl A 2-3) 992-1022  
7 October 09

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- CSEC is mandated to provide technical and operational assistance to federal law enforcement and security agencies, including CSIS.
- In providing this assistance under its assistance mandate, CSEC is subject to any limitations imposed by law on the organization it is assisting. Any such assistance is also subject to review by the CSE Commissioner, its review body.
- All information obtained under the warrant belongs to CSIS.

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Ewa Petruczynik (D Parl A 2-3) 992-1022  
8 October 09

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**MEDIA RESPONSE LINE/ RÉPONSE AUX MÉDIAS**

**ISSUE/ ENJEU:** Justice Mosley Federal Court Decision

**Media Query / Demande:** Produced in anticipation of media queries

**Reporter / Journaliste:** Name and outlet/ Nom et agence

**Date:** June xx, 2009

**Deadline/ Échéance:**

**OVERVIEW/ APERÇU**

Justice Mosley of the Federal Court of Canada has ruled that CSIS may, with a warrant, request assistance from CSEC to intercept the communications of Canadians located abroad.

**\*\* Please note that key messages below might need to be toned down as the level of details that will be made public about the court decision is still unknown.**

**KEY MESSAGES/ MESSAGES CLÉS**

- CSIS may obtain a warrant authorizing them to intercept, from Canada, the communications of and obtain information about Canadians while they are outside of Canada.
- Under subsection 273.64(1) of the *National Defence Act*, CSEC is mandated to provide technical and operational assistance to CSIS in the performance of their lawful duties as a security agency.
- All CSEC and CSIS activities are strictly bound by the limits imposed by the warrant and their own lawful duties.
- All CSEC activities are subject to review by the CSE Commissioner and CSIS activities are reviewed by SIRC.
- All information acquired under the warrant belongs to CSIS.

**ADDITIONAL INFORMATION/ RENSEIGNEMENTS SUPPLÉMENTAIRES**

The CSE Commissioner will have access to a copy of the warrant so that he can review any of the activities CSEC undertakes in assisting CSIS. The CSE Commissioner performs a completely independent review of all of CSEC's activities. SIRC would be reviewing CSIS's activities undertaken with the assistance of CSEC.

**Q1 Does this mean that CSEC can now target Canadians abroad?**

A1 CSEC does not direct its activities at Canadians anywhere or at any person located in Canada. The ruling pertains to CSIS directing its activities at Canadians located abroad in the performance of their lawful duties and when authorized by a warrant. By law, CSEC may provide technical and operational assistance to CSIS as a security agency.

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**Q2 Does this mean that CSEC is now spying on Canadians on behalf of CSIS?**

A2 It means that CSEC is mandated by the *National Defence Act* to provide technical and operational assistance to CSIS in the performance of their lawful duties as a security agency and that CSIS can direct its activities at Canadians located abroad in the performance of their lawful duties and when authorized by a warrant.

**Q3 Why doesn't CSEC require warrants to conduct its activities?**

A3 CSEC does not require warrants because CSEC does not direct its activities at Canadians anywhere or at any person located in Canada. When providing assistance to CSIS, CSEC is not acting under its own authority, but under the authority of CSIS, as authorized by the *National Defence Act*.

**Drafted by / Préparé par:** Adrian Simpson, Media Relations Advisor, 949-2218

**Consulted / Consultation:** Joanne Duguay, Manager Strategic Communications; Suzie Lebel, Director Public Affairs and Communications Services 991-8358; Sue Greaves, Director Corporate and Operational Policies; Rémi Chapadeau, Directorate of Legal Services

**Approved by/ Approbation:** Kathy Thompson, DG Policies and Communications, 998-2595; Penny Reddie, Associate Chief, CSEC, 613-991-7501

**Date: June 16, 2009**

**Revised/ Révision:**

**MRL Number/ Numéro RAM:**

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Office of the  
Communications Security  
Establishment Commissioner



Bureau du  
Commissaire du Centre de la  
sécurité des télécommunications

~~TOP SECRET/COMINT/CEO~~  
(with attachment)

1 April 2009

Ms. Kathy Thompson  
Director General, Policy and Communications  
Communications Security Establishment Canada  
Sir Leonard Tilley Building  
719 Heron Road  
Ottawa, Ontario  
K1G 3Z4

Dear Ms. Thompson:

Please be advised that OCSEC will commence a review of CSEC's *Activities* in accordance with the workplan previously provided to you. This review will be conducted under the authority of paragraph 273.63(2)(a) of the *National Defence Act*.

Terms of Reference for the review are enclosed. A draft of this document has been reviewed by CSEC officials.

To formally begin this review, I hereby request:

- copies of the forms, as per OPS-1-10, for authorizations to that CSEC has advised have been conducted since CSEC recommenced this activity in October 2008;
- a list of all associated reporting which resulted from those activities;
- request forms for any disclosures of personal information about Canadians related to the associated reporting.

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I would appreciate if the information noted above could be provided to Ann Alain, Senior Review Advisor, who is conducting this review, by Wednesday April 15, 2009. If this date poses any problems, please ask your staff contact her. Subsequent to receiving this initial information, she will request any other documentation which would be pertinent to this review, and then request interviews with certain CSEC personnel.

I anticipate that the review activities will be completed by the end of June 2009, and the draft report completed by the end of August 2009. As has been our practice to date, prior to forwarding the draft report to CSEC for comments as to factual accuracy, we will present a summary of the findings. Subsequently, upon receipt of CSEC's written comments on the draft report, we will respond to the comments prior to finalizing the report.

If you have any questions, please do not hesitate to contact Bill Galbraith, Director of Operations. Your assistance in this matter is greatly appreciated.

Yours sincerely,



Joanne Weeks  
Executive Director

Att.



SECRET/CEO

Office of the Communications Security Establishment Commissioner (OCSEC)

CSEC's Review of  
Activities

Terms of Reference

**Introduction:**

We have conducted a number of reviews which have included the examination of CSEC's activities. These reviews were: *CSE's Support to Law Enforcement (RCMP) - Phase II*; *Ministerial Directive, Communications Security Establishment, Collection and Use of Metadata, March 9, 2005 [Metadata MD Review]*; and *CSE Support to CSIS*. It is now the Commissioner's intent to undertake a review focusing on CSEC's activities.

The reviews referred to above included findings and recommendations related to this issue, and the *Metadata MD Review* proffered the following recommendation (reiterated in the *CSE Support to CSIS* review):

**CSE should re-examine and re-assess the legislative authority used to conduct its activities particularly those supplied by federal law enforcement and security agencies**

CSEC's new OPS-1-10 policy, *Procedures for Metadata Analysis* was approved in September 2008. Previously, only draft or interim policy guided this activity, until the activity was suspended in August 2007. This activity was resumed in October, 2008.

**Authority:**

The review is conducted under the authority of the Commissioner, as articulated in Part V.1, paragraph 273.63(2)(a) of the *National Defence Act (NDA)*.

**Objective:**

The objective of the review is to examine CSEC's activities, as they pertain to to determine whether CSEC has complied with the law, whether measures were in place to protect the privacy of Canadians; and the extent to which those measures were applied.

**Period of Review:**

October 1, 2008 to March 31, 2009.

**Scope:**

We will examine in detail all of CSEC's activities, from the resumption of these activities in October 2008 to March 31, 2009, as well as any resulting reporting and disclosure of personal information about Canadians.

**Criteria:**

**1. Legal Requirements**

We expect that CSEC would conduct its activities in a manner that:

- i) is in accordance with the *National Defence Act (NDA)*, Canadian *Charter of Rights and Freedoms*, *Privacy Act*, *Criminal Code*, any other relevant legislation and Justice Canada advice.

**2. Ministerial Requirements**

We expect that CSEC conducts its activities in a manner that is in accordance with all applicable ministerial authorizations and directions and any conditions imposed by the Minister, particularly with respect to protecting the privacy of Canadians. We would also expect that CSEC conduct its activities in a manner that is consistent with the terms and provisions of any Memoranda of Understanding that may relate to this activity.

**3. Policies and Procedures**

We expect that CSEC:

- i) would have appropriate policies and procedures that guide its activities that are consistent with legislative and ministerial requirements and that contain measures to protect the privacy of Canadians;
- ii) has personnel who are aware of and comply with the policies and procedures; and

- iii) has the means to determine if the activities have been conducted in a manner consistent with the policies and procedures and that the integrity of the activities is maintained on a routine basis, including appropriately accounting for important decisions and information.

**Methodology:**

We will examine:

- in detail, the legislative and policy framework relating to CSEC's activities ;
- all authorizations to submitted and authorized during the review period as well as the source or origin
- associated end-product reporting, any resulting disclosures of personal information about Canadians;
- the status of relevant recommendations and findings from previous reviews;
- any other applicable written and electronic records, files, correspondence, or other documentation we deem relevant to CSEC's activities and
- any legal advice or opinions relevant to CSEC's activities

We will conduct interviews with the appropriate CSEC personnel with respect to CSEC's activities

We will examine any other issue that may arise during the course of the review that we deem relevant to CSEC's activities and will so notify CSEC.

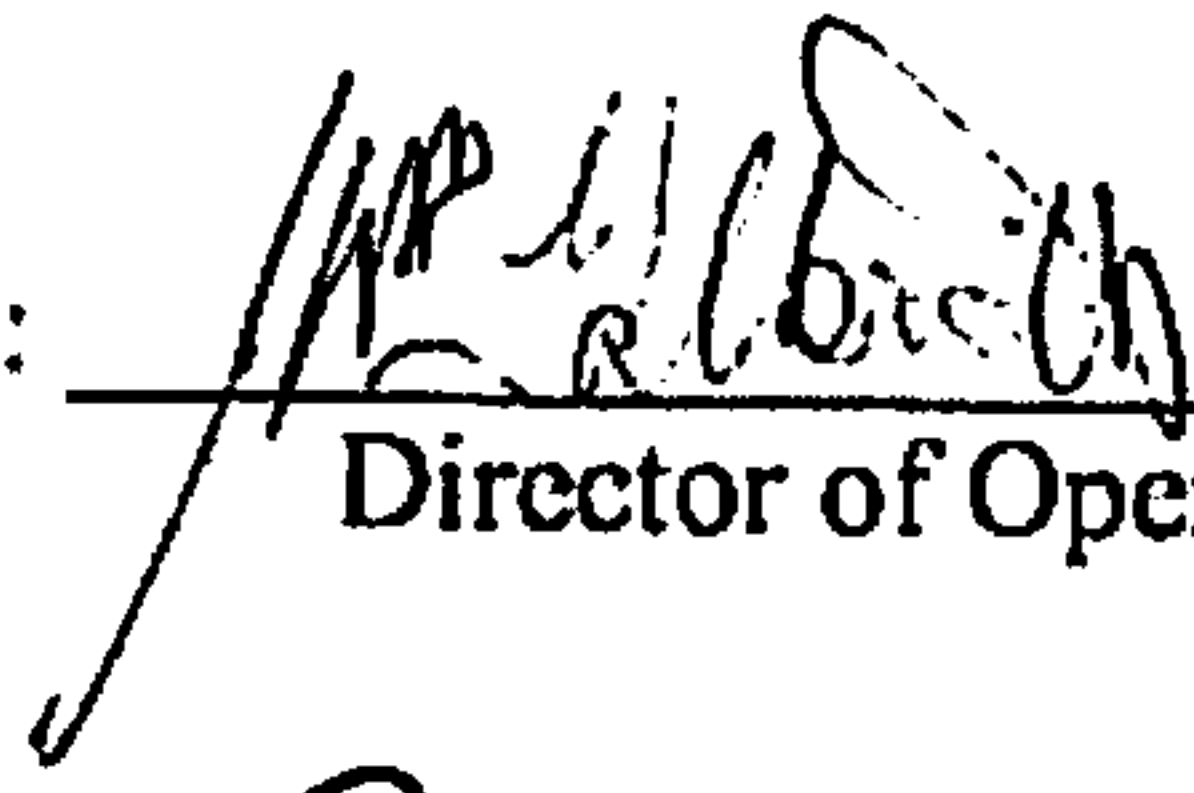
Finally, we will report on the results of the review, highlight significant findings and provide any recommendations, as appropriate. Prior to forwarding the draft report to CSEC for comment as to factual accuracy, we will meet with CSEC to present a summary of the findings and recommendations.

**Time Frame for Completion of the Review:**

It is anticipated that the review activities (including document review, interviews and responses to any questions) will be completed by the end of June 2009, and a draft report produced by the end of August 2009.

**Name of Reviewer(s):**

Ann Alain and Colette D'Avignon

Reviewed by:  Date: 01 April, 2009  
Director of Operations

Approved by:  Date: April 1, 2009  
Executive Director

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**CSE should re-examine and re-assess the legislative authority used to conduct its activities particularly those supplied by federal law enforcement and security agencies engaged in ongoing criminal and national security investigations.**

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- any legal advice or opinions relevant to CSEC's activities

We will conduct interviews with the appropriate CSEC managers and any other personnel, as required, with respect to CSEC's activities

We will report on the results of the review, highlight significant findings and provide any recommendations, as appropriate. Prior to forwarding the draft report to CSEC for comment as to factual accuracy, we will meet with CSEC to present a summary of the findings and recommendations.

Finally, we will examine any other issue that may arise during the course of the review that may be deemed, by the Commissioner's office, to relate to CSEC's activities and will so notify CSEC.

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Ann Alain and Colette D'Avignon

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Operations

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Executive Director

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